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Supreme Court of the United States

OCTOBER TERM, 1968

No. 517

THE NATIONAL BOARD OF THE YOUNG MEN'S CHRISTIAN
ASSOCIATIONS, ET AL., *Petitioners*

v.

THE UNITED STATES, *Respondent*

On Writ of Certiorari to the United States Court of Claims

APPENDIX

Relevant Court of Claims Docket Dates

October 5, 1966—Petition filed.

February 3, 1967—Answer filed.

August 9, 1967—Defendant's Motion for Summary Judgment filed.

August 9, 1967—Stipulation as to Exhibits filed.

October 16, 1967—Cross-Motion for Summary Judgment filed.

June 14, 1968—Decision of Court of Claims.

THE UNITED STATES COURT OF CLAIMS

Court of Claims No. 344 66

THE NATIONAL BOARD OF THE YOUNG MEN'S CHRISTIAN ASSOCIATIONS, THE SOJOURNER'S LODGE, MASONIC TEMPLE, and THE COMMERCE AND INDUSTRY INSURANCE COMPANY,
Plaintiffs,

v.

THE UNITED STATES, Defendant.

Petition

1. This is an action for just compensation for real property appropriated to public use and damages resulting from the U. S. Army's seizure, use and occupation of plaintiffs' property.

2. Plaintiffs herein are citizens of the United States; their claims exceed \$10,000 each and are founded upon: (1) the Fifth Amendment to the United States Constitution; (2) § 2733 of the Military Claims Act, 10 U.S.C. § 2731, *et seq.*; (3) § 536.14 of Army regulations pertain-

ing to military claims, 32 C.F.R. § 536.1, *et seq.*; (4) implied contracts with the United States; and (5) are for liquidated damages in cases not sounding in tort. This Court has jurisdiction under 28 U.S.C. § 1491, as hereafter more fully appears.

3. The claims in question arise out of the Army's seizure, use and occupation of plaintiffs' real property during the Panamanian riots of 1964. The pertinent facts relating to the Army's appropriation and use of plaintiffs' property were established in an official U.S. presentation before the Organization of American States entitled *Background And Chronology Of The Events In Panama And The Canal Zone On The Ninth, Tenth, And Subsequent Days In January 1964* (hereinafter referred to as "U.S. Presentation"). They were later amplified in a "Fact Sheet" (hereinafter referred to as "Fact Sheet"), prepared by Mr. Alfred B. Fitt, General Counsel of the Army, attached to a letter dated 17 March 1965 to Mr. Ronald A. Jacks, counsel for plaintiffs herein. The pertinent facts and the document in which they appear are set forth below in paragraphs 4 through 21.

4. "The rioting in the Cristobal-Colon area began on the night of January 9, 1964, a few hours after rioting had already begun on the Pacific side of the Isthmus. The events as they occurred in the area of the Masónic Temple and the YMCA area were described in the United States presentation before the Committee established under the resolution of the OAS:

"The first indications of trouble in the Cristobal-Colon area . . . were noted at 8:00 p.m. At that time about a dozen singing, shouting persons, carrying a Panamanian flag, were observed as they marched on Bolivar Street past the front of the Cristobal Armed Services Y.M.C.A.'" (Fact Sheet, p. 1, citing U.S. Presentation, p. 50).

5. "By 9:14 p.m., a mob of 1,500 persons had formed. The mob entered the Canal Zone, proceeded to the Panama Canal Administration Building, and raised a Panamanian flag. At this time, the mob was described as not violent, but nevertheless unruly and clearly affected by the action of agitators. At 9:30 p.m., the mob left the area of the Administration Building, and in a disorderly manner, headed along 11th Street and past the Masonic Temple." (Fact Sheet, p. 1).

6. "A group of teenage girls leaving the Masonic Temple after a meeting nearly became enveloped by the mob as it moved past on its return to Colon. A retired U.S. Army Sergeant, residing at the nearby Y.M.C.A., stood by with a shotgun he owned to protect the girls. Without having fired it, he turned his shotgun over to Canal Zone police later that night. Soon after the girls left, a barrage of rocks and other missiles was thrown at the Masonic Temple." (U.S. Presentation, p. 51).

7. "By 9:45 p.m. a crowd of about 400 persons had gathered at the intersection of 11th and Bolivar Avenue in Colon. Held there in check briefly by the National Guard, the demonstrators pressed on down 11th Street to Balboa Avenue. At almost 10:15 p.m., after again being briefly checked by the National Guard, a contingent of the mob surged up Balboa Avenue to a point near the Y.M.C.A. While police officers attempted to calm the forward contingent of the mob, windows could be heard being broken in Panama Canal offices adjacent to the main body of the crowd. The destruction by elements of the mob became more extensive. Windows and doors in the Panama Canal Company Office and Storage Building were broken; furniture was dragged out into the street; and pieces of office equipment were destroyed or stolen. . . . Besides the damage to the Panama Canal Company Office and Storage Building, extensive damage was incurred in the Masonic Temple and the Y.M.C.A.

While police were preoccupied on Balboa Avenue, other rioters entered the Cristobal Y.M.C.A. on Bolivar Avenue, looted the gift shop, destroyed furniture, and overturned file cabinets." (U.S. Presentation, pp. 52-53).

8. "The commanding officer of the 4th Battalion, 10th Infantry had been alerted at 8:50 p.m., but was not given the order to move until 9:50 p.m. The order which he received from higher headquarters directed him to move to the Cristobal area, and assigned him the mission to clear the Canal Zone of rioters, and to seal the boundary between the Republic of Panama and the Canal Zone." (Fact Sheet, p. 2).

9. "At about 10:15, the battalion, consisting of about 700 men, arrived in the area of Pier 9 in Cristobal. The battalion commander went forward toward the Zone boundary to reconnoiter the situation. As described above, the rioting had already reached a frenzied pitch. In his testimony before the International Commission of Jurists, the commander described the situation as he arrived on the scene:

"I first went to the intersection of Front Street and 11th Street; I circled back to Terminal Street, and I noticed that there was approximately 300 rioters scattered throughout the area from the intersection of Front Street and 11th, by the Commissary Building, around the Masonic Building and to the rear of the Y.M.C.A.

"I returned quickly to Pier 9, picked up Company 'A', returning to the intersection of 11th and Front Street. I had the troops to dismount, put on their gas masks, put the bayonets on their weapons, and formed into a riot control formation. The order of the Commander was to move down the right side of 11th Street, to drop personnel off sealing the border as they went.

'At this point, my Executive Officer arrived on the scene. I requested that he stay with Company 'A'. I told him I would return to get Company 'B', and commit Company 'B' up Terminal Street to clear the area between 13th and 14th Street and to seal the border.

'After committing Company 'B', I returned back to Company 'A' to see what action was taking place.'"
(*Id.*, p. 3).

10. "Complying with the battalion commander's order, Company A had moved in column formation down 11th Street, staying within the Zone, dropping off men as they went to form a cordon sealing off the border. The Company turned right onto Balboa Avenue, and went into the echelon formation frequently used for riot control purposes. The echelon was to the left, so that rioters forced to withdraw before the troops would be urged to retreat through alleys between the Masonic Temple and YMCA, and thence back across the Zone Boundary on Bolivar Avenue and into the Republic." (*Ibid.*).

11. "After a scuffle with the rioters, the troops continued along Balboa Avenue until they reached 13th Street. Groups of men were left at intersections to move up to the boundary along Bolivar Avenue. When the main body of Company A reached 13th Street, it faced about, retraced the route up Balboa Avenue, turned right onto 11th Street, and began to advance toward the intersection of 11th and Bolivar." (*Id.*, p. 4).

12. "At this point, about 15 Panamanians, who had been ransacking the Masonic Temple, began jumping from the windows on the first and second floors onto the troops passing by below on 11th Street. These rioters were promptly ejected from the Zone by the troops, who then linked up with the other troops of the company who had been detached from the main body of the company, and

who had made their way up 12th and 13th Streets to Bolivar Avenue. The salient formed by the Zone boundary along 11th Street and Bolivar Avenue was sealed, and the mob cleared from the Canal Zone area within the salient. This area included the Masonic Temple and the YMCA." (*Ibid.*).

13. "The troops were confronted with a mob estimated by the company commander to be approximately 3,000. This mob began to assault the troops with a shower of rocks, bricks, plate glass, and Molotov cocktails. Two soldiers of Company A were wounded by bullets. Others were seriously injured by the flying debris and Molotov cocktails. Once, the rioters attempted to push an automobile through the cordon of troops, but the vehicle collided with other rioters." (*Ibid.*).

14. "During these initial hours when the Infantry remained in position on the line, only tear gas grenades were used to contain the mob and discourage their attacks." (*Ibid.*).

15. "Before midnight of the 9th, Company A had sustained many injuries. The battalion commander therefore relieved Company A, pulled it back well to the rear, and replaced it with Company C. Soon after Company C took up positions, one man in the company was shot and killed and at least two others wounded by sniper fire. In order to protect the troops from the sniper fire, around midnight the commanding officer of Company C moved the company back into the Masonic Temple, the YMCA, and the Commissary Building. Company B, whose commander had been wounded and first sergeant killed by sniper fire, also fell back from the Zone boundary, and took up position along the railroad tracks. By morning of the 10th, a third soldier had been killed by snipers, and a total of nine wounded. The troops had not yet returned fire on the snipers." (*Id.*, pp. 4-5).

16. "With the coming of daylight on the 10th, the rioters increased their efforts to burn the buildings on the Zone side of the boundary. Before the ICJ, the battalion commander testified:

'During the morning hours of the 10th, after from around 6:00 a.m. to 12:00 Noon, we received heavy Molotov cocktails in the vicinity of the Masonic Building, the YMCA Building and the Commissary Building.' " (*Id.*, p. 5).

17. "The events of Friday the 10th are described in the OAS presentation:

'At 10:00 a.m. an attack of Molotov cocktails was launched against the Cristobal Y.M.C.A., setting the building on fire. Sniper fire hindered Canal Zone firefighters who attempted to control the blaze. Company C, which had taken up positions in the Y.M.C.A. was forced by the fire to evacuate the building shortly after 2:00 p.m., and the second platoon took up sandbag positions in the parking lot behind the Y.M.C.A.

'The rioters then shifted their attack to the Masonic Temple, again employing Molotov cocktails. The Company was forced to move the command post from the Masonic Temple that afternoon but was able to maintain an observation post on the top floor of the structure.

'The Y.M.C.A. continued to be a target for Molotov cocktails during the day. Sniper activities continued at 12th Street and Bolivar Avenue. The barrage of rocks from across Bolivar Avenue at 11th Street in Colon resumed at 11:38 a.m. During this disturbance, a group of people ran a car up on the sidewalk at 11th Street and Balboa Avenue and set it on fire.

'A group of about 200 people in the area of 11th Street and the railroad tracks was forced back into Colon by the use of tear gas.

'The soldiers who remained in the observation post on the top floor of the Masonic Temple continued to receive heavy sniper fire for two and one-half hours in the evening of Friday, January 10th. That evening at the building of the Cristobal Credit Union, troops of Company B were faced with a group of about 50 people attempting to set fire to the building. The mob was dispersed with the use of tear gas while Canal Zone firemen extinguished the fire.'" (*Id.*, pp. 5-6, citing U.S. Presentation, pp. 57-59).

18. "In addition to the attacks with rocks and Molotov cocktails, heavy sniper fire continued throughout the 10th and into the 11th, when two soldiers on the top floor of the Masonic Building were wounded. Finally, in the early afternoon of the 11th, the battalion commander reported to Army headquarters that his unit had sustained an alarming number of casualties (3 dead, 15 wounded). Headquarters therefore granted permission to return fire on snipers using shotguns only. Selected marksmen were then authorized to fire on known snipers." (Fact Sheet, p. 6).

19. "The harassment from stones and Molotov cocktails continued. On the morning of the 12th, Panamanians throwing Molotov cocktails from the Olimpia Bar succeeded in setting fire to the second story of the Masonic Temple. Since the battalion commander had been authorized to return fire on snipers only, he did not fire on the people throwing Molotov cocktails." (*Ibid.*).

20. "In the early morning hours of the 13th, the Guardia Nacional took official control of the Colon side of the boundary, searching all houses along their side of the boundary. Hostile action in the area thereafter ceased." (*Id.*, p. 7).

21. In his "Fact Sheet," the General Counsel of the Army concluded that the facts related above "may be

ascertained from a reading of the United States presentation before the OAS, as well as the testimony before the International Commission of Jurists and the Report issued by that committee. A thorough examination of the sworn statements given by Army personnel who were involved in the incidents in the Cristobal-Colon area reveals that these statements fully corroborate the public record." (*Id.*, p. 8).

22. On Monday, January 14, 1964, Lt. Colonel Sachse, Commanding Officer of the 4th Battalion, 10th Infantry, during the riots and Colonel H. C. Harrison, Director of Engineering and Construction for the Panama Canal Co., met with Mr. Rex O. Knight, and Mr. H. E. Salter, of the Masonic Temple, and advised them that the Government wanted to "make certain innovations to the building to protect it in the event of future attack." These included sealing off the ground floor and placing heavy screening over the second and third floor windows. During the discussion Colonel Sachse told Mr. Knight and Mr. Salter that "if it had not been for this building they would have taken the docks. As long as this building is here, I can defend the Zone on this end. If not, we should tear it down and establish a buffer zone."

23. Although the Masonic Temple never gave formal authorization, the Government, acting through the Canal Zone Government and/or the Corps of Engineers, moved in and sealed off the ground floor of the Temple with cinderblocks. Glass blocks were later installed in some portions of the ground floor in order to provide some natural lighting. However, the Government never offered to compensate the Temple for the damage suffered after the Army took over the building, the loss of value due to its permanent alterations, or loss of rental income arising from sealing off the ground floor.

24. Lt. Colonel Sachse and Colonel Bolger from the staff of General O'Meara, Commanding Officer of the U.S.

Forces in the Canal Zone, also inspected the YMCA shortly after the riots for the apparent purpose of determining whether the remains of the building could be used as a fortification in the event of future rioting. However, at no time during or since these visits has the Army or the Canal Zone Government offered to compensate the YMCA for the damages suffered.

25. At the time of the loss, the Commerce and Industry Insurance Company of 2 Park Avenue, New York, New York, had in effect Standard Fire Policy No. 15800, issued to the National Board of the YMCA and covering a number of scheduled locations, including the building in Cristobal. The insured perils included direct loss by fire, but did not cover non-fire loss caused by riot and civil commotion.

26. Upon receipt of claim by the YMCA for the loss in question, Commerce and Industry deducted: (1) the non-fire damage caused by the uninsured perils of riot and civil commotion; (2) the depreciation necessary to reduce the claim to the measure of damages employed in the particular policy, and certain further deductions under the co-insurance clause. After making these deductions, the parties agreed upon total payment under the policy, in the amount of \$110,000. On February 17, 1965, that sum was paid to the insured in return for an executed loan receipt which subrogated Commerce and Industry to \$110,000 of any recovery arising out of the loss.

27. The National Board of the YMCA and the Commerce and Industry Insurance Company make joint claim in this action for the sum of \$212,196. Of this amount, the parties have agreed that Commerce and Industry is entitled to the first \$110,000 of any recovery by virtue of its payment under the policy and the terms of their loan receipt.

28. The basis upon which this joint claim has been computed is set forth in Table A below. Columns (1) and (2) contain the original estimates of loss prepared by the YMCA's registered architect, Mr. Edmund R. MacVittie,

for repairing and/or replacing each item and necessary deductions for salvage and savings. Column (3) contains deductions for property damage which occurred *before* the Army took over the building and is thus nonrecoverable in this action.

TABLE A

CALCULATION OF JOINT CLAIM BY YMCA AND COMMERCE AND INDUSTRY INSURANCE COMPANY

	(1)	(2)	(3)	(4)
Buildings:	Amount of Total Loss at Repair or Replacement	Deductions for Salvage and Savings	Deductions for Nonrecoverable Damage	Amount Claimed
Classroom	85,910	(20,161)	—0—	65,749
Auditorium	84,700	(25,329)	—0—	59,371
Adm. & Dorm.	40,150	—0—	(4,000)	36,150
Contents:				
Classroom	7,018.50	—0—	—0—	7,018
Auditorium	13,112.50	—0—	—0—	13,113
Adm. & Dorm.	27,695	—0—	(12,000)	15,695
Supplies	2,239	—0—	(500)	1,739
Gift Shop	13,625	—0—	(13,625)	—0—
Concessions	11,400	—0—	(11,400)	—0—
Removal of Debris	3,285	—0—	—0—	3,285
Renovation Project	10,076	—0—	—0—	10,076
Totals	299,211	(45,490)	(41,525)	212,196

29. The Sojourner's Lodge of the Masonic Temple, Cristobal, Canal Zone, makes claim in this action for the sum of \$44,620.74. The details of that claim may be summarized as follows:

TABLE B

CALCULATION OF CLAIM OF MASONIC TEMPLE

Replacement of large windows on ground floor	\$ 2,840.00
All other glass breakage	4,840.60
Fire damage to building	25,316.10
Loss to property due to sealing off ground floor	4,824.04
Loss of rent due to sealing off ground floor	6,800.00
TOTAL	\$44,620.74

30. On May 26, 1965, plaintiffs herein filed a joint claim with the United States Department of the Army for the damages in question under § 2733 of the Military Claims

Act and related regulations. The claims were contained in a Standard Form 95 "Claim for Damage or Injury," and accompanied by a "Memorandum in Support of Claim," and attached exhibits.

31. On October 8, 1965, Colonel Paul J. Leahy, Chief of the Army Claims Service, denied plaintiffs' claims on the ground the losses in question were not "incident to non-combat activities" of the Department of the Army and hence not payable under the Military Claims Act.

32. Plaintiff appealed this decision to the Secretary of the Army under 32 C.F.R. § 536.11. Plaintiffs repeatedly requested a copy of the Claims Service's final memorandum to the Secretary detailing the reasons for its denial of their claims. However, they were never allowed to see or respond to that document and thus were effectively deprived of their right of appeal to the Secretary.

33. On August 19, 1965, Mr. John Fitch, Deputy Assistant Secretary of the Army (Financial Management), acting pursuant to delegated authority from the Secretary of the Army, denied plaintiffs' claims on the ground they were not covered under the Military Claims Act.

34. The facts set forth above in paragraphs 4-33 give rise to a claim for just compensation for property appropriated to public use under the Fifth Amendment to the United States Constitution which provides in pertinent part:

... nor shall private property be taken for public use, without just compensation.

35. The facts set forth above in paragraphs 4-33 also give rise to a claim under § 2733 of the Military Claims Act which provides in pertinent part:

Property loss; personal injury or death:

incident to noncombat activities of Department of Army, Navy or Air Force

(a) Under such regulations as the Secretary of a military department may prescribe, he or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than \$5,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, or Marine Corps, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department.

.

(d) If the Secretary of the military department concerned considers that a claim in excess of \$5,000 is meritorious and would otherwise be covered by this section, he may pay the claimant \$5,000 and report the excess to Congress for its consideration.

36. The facts set forth above also give rise to a claim under § 536.14 of the Department of the Army regulations covering the application of the Military Claims Act, 32 C.F.R. § 536.1, *et seq.*, which provides in pertinent part:

32 C.F.R. § 536.14 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of

property, real or personal, is payable under the regulations of §§ 536.12—536.23 when:

(2) Incident to the noncombat activities of the Army.

(c) *Property.* The property for damage or loss of which claims may be settled under §§ 536.12—536.23 includes:

(1) Real property used and occupied under lease, express or implied, or otherwise;

(e) *Noncombat activities.* Claims may be settled under §§ 536.12—536.23 if they arise from authorized activities which have little parallel in civilian pursuits or which historically have been considered as furnishing a proper basis for the payment of claims, such as maneuvers, special field exercises, practice firing of heavy guns or other weapons, practice bombing, operation of aircraft, use of barrage balloons, escape of animals, use of instrumentalities having latent mechanical defects, movement of combat or other vehicles designed especially for military use, and use and occupancy of real estate.

37. The facts set forth above also give rise to an implied contract to compensate plaintiffs for damage to their real property which occurred during the taking and seizure by the Army without due process of law or established requisition procedures and resulting use and occupation.

38. The facts set forth above also give rise to a claim for liquidated damages in a case not sounding in tort within the meaning of 28 U.S.C. § 1491(5).

WHEREFORE, plaintiffs demand:

1. Judgment in favor of plaintiff National Board of the YMCA in the amount of \$112,196.00.
2. Judgment in favor of plaintiff Commerce and Industry Insurance Company in the amount of \$110,000.00.
3. Judgment in favor of the Sojourner's Lodge, Masonic Temple, in the amount of \$44,620.74.

Respectfully submitted,

**NATIONAL BOARD OF THE YMCA
291 Broadway
New York, New York.**

**SOJOURNER'S LODGE, MASONIC
TEMPLE
Box 5076
Cristobal, Canal Zone**

**COMMERCE AND INDUSTRY
INSURANCE COMPANY
2 Park Avenue
New York, New York**

**RONALD A. JACKS
Ronald A. Jacks
815 Connecticut Avenue, N.W.
Washington, D. C.**

Attorney for Plaintiffs

Answer***First Defense***

This Court lacks jurisdiction of the subject matter of the action.

Second Defense

The petition fails to state a claim upon which relief can be granted against the defendant.

Third Defense

1. The defendant admits that paragraph 1 of the petition correctly characterizes the plaintiffs' concept of the nature of this action, but denies that this concept is valid.

2. The defendant admits that the plaintiffs are citizens of the United States, that their claims exceed \$10,000, and that they base their claims on the statutes and legal theories specifically set forth in paragraph 2 of the petition, but the defendant denies the applicability to this case of those statutes, or the soundness of those legal theories. The last sentence of paragraph 2 of the petition is a conclusion of law to which no response is required.

3. The defendant denies the allegation of the first sentence of paragraph 3 of the petition that there was a "seizure, use and occupation of plaintiffs' real property" by the defendant during the Panamanian riots of 1964. Except for the words "relating to the Army's appropriation and use of plaintiffs' property," the defendant admits the allegations of the second sentence of paragraph 3 of the petition, and the allegations of the third sentence of that paragraph.

4. The defendant admits the allegations of paragraphs 4 through 21 of the petition.

5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the petition.

6. The defendant admits the allegation of the first sentence of paragraph 23 of the petition that the large glass windows on the ground floor of the Masonic Temple, which windows were broken by rioting mobs in the Canal Zone, were replaced by the Government, at no charge to the Temple, first by cinderblocks and later by translucent glass blocks, but the defendant denies that authorization for this replacement was never given by the Temple. The defendant also denies that this replacement of glass windows "sealed off" the ground floor in the Temple, in the sense that it in any way restricted or impeded the entry or exit of persons from the building. The defendant admits the last sentence of paragraph 23 of the petition.

7. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation of the first sentence of paragraph 24 of the petition. The defendant admits the allegation of the second sentence of paragraph 24.

8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 25 through 27 of the petition.

9. The defendant admits that paragraphs 28 and 29 of the petition contain a correct statement of the plaintiffs' claims for damages, but has no knowledge or information upon which either to admit or deny that the amounts claimed correctly reflect the injuries suffered. In any event, the defendant denies the assertion in paragraph 28 of the petition that the "Army took over the building," and the defendant further denies that it is liable for any or all of the damages claimed by the plaintiffs, these damages having been caused not by the defendant, but by a rioting mob.

10. The defendant admits the allegations of paragraphs 30 and 31 of the petition, and of the first two sentences of paragraph 32 of the petition. The defendant further admits that the plaintiffs were not permitted to see the docu-

ment referred to in paragraph 32 of the petition, but denies that this in any way interfered with their right of appeal to the Secretary of the Army.

11. The defendant admits the allegations of paragraph 33 of the petition, except for the date therein stated, which should be August 19, 1966.

12. All of the allegations of paragraphs 34 through 38 of the petition, to the extent that they are not conclusions of law, are argumentative and do not require answer, and, consequently, are neither admitted nor denied, but to the extent that they may be construed as allegations of fact, they are denied.

13. The defendant denies each and every allegation of the petition not specifically admitted, denied or qualified herein.

WHEREFORE, having fully answered, the defendant prays that the petition be dismissed.

Respectfully submitted,

EDWIN L. WEISL, JR.

Edwin L. Weisl, Jr.

Assistant Attorney General

MARTIN GREEN

Martin Green

*Attorney, Department of
Justice*

Attorneys for Defendant

Motion for Summary Judgment

Defendant moves for summary judgment on the following grounds:

1. The petition fails to state a claim upon which relief can be granted.
2. There is no genuine issue as to any material fact and the defendant is entitled to judgment as a matter of law.

This motion is made on the basis of the petition filed in this case, the defendant's answer thereto, and the stipulation entered into between the plaintiffs and the defendant, and filed concurrently with this motion.

Respectfully submitted,

EDWIN L. WEISL, JR.

Edwin L. Weisl, Jr.

Assistant Attorney General

MARTIN GREEN

Martin Green

Attorney

Attorneys for Defendant

Stipulation

The parties hereto, by their respective counsel, hereby mutually agree and stipulate as follows:

1. All statements of fact contained in a 98-page document entitled "United States Presentation—Background and Chronology of the Events in Panama and the Canal Zone on the Ninth, Tenth and Subsequent Days in January 1964 for the Committee Established under the Resolution of OAS/OC, February 6, 1964" (a copy of which is attached hereto, and marked Exhibit A), shall be considered true for purposes of this litigation.

2. All statements of fact contained in a 9-page "Fact Sheet" compiled by the Office of General Counsel of the Army and attached to a letter of March 17, 1964, from Mr. Alfred B. Fitt, General Counsel to Mr. Ronald A. Jacks, attorney for the plaintiffs herein (a copy of which is attached hereto and marked Exhibit B), shall be considered true statements of fact for purposes of this litigation.

3. All statements of fact and direct testimony contained in a 115-page document entitled "Transcript of the United States Oral Presentation on February 14th and 15th, 1964 to the Committee Established under the Resolution of the OAS/OC, February 6, 1964" (a copy of which is attached hereto and marked Exhibit C), shall be considered true for the purposes of this litigation.

4. The thirty-seven photographs and seven maps contained in a document entitled "Photographs—Exhibit P" (a copy of which is attached hereto and marked Exhibit P), correctly depict what the inscriptions at the bottom of the photographs and the legends on the maps state they depict.

5. Copies of the eleven items described and included in Exhibit D attached hereto are true and correct reproductions of authentic originals.

6. The thirty-three photographs contained in Exhibit E attached hereto, correctly depict scenes and incidents described therein.

7. No party shall be deemed foreclosed from objecting either to the facts or the documents on the ground of irrelevancy or immateriality and both plaintiffs and defendant shall be free to offer such additional evidence as may appear proper, except for the purpose of contradicting the facts stipulated or impeaching the authenticity of the documents and photographs above described.

RONALD A. JACKS

Ronald A. Jacks

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Washington, D. C. 20006

Attorney for Plaintiffs

EDWIN L. WEISL, JR.

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Attorneys for Defendant

EXHIBIT A**United States Presentation**

**Background and Chronology of the Events in Panama
and the Canal Zone on the Ninth, Tenth, and Subsequent
Days in January 1964 for the Committee Established
Under the Resolution of the OAS/OC,
February 6, 1964**

Introduction

This is a presentation of the events which began on January 9, 1964, in Panama and the Canal Zone. It is based on exhaustive analyses of eye-witness accounts, contemporaneous statements, and relevant documents. In an effort to provide the Committee with a complete view of the events, photographs, maps, and other materials are included.

Part I is a detailed chronology of the flag incident at the Balboa High School and the massive mob violence and persistent sniper attacks that followed. Canal Zone officials had reason to believe that the flag issue could be resolved by persuasion and forbearance and without the use of force. However, an unannounced march to Balboa High School by some 200 Panamanian students, undertaken for the purpose of displaying the Panamanian flag, resulted in an explosive confrontation that set the stage for the tragic events which followed.

Owing to the skill and restraint of Canal Zone police and school officials, the departure of the demonstrators from the Zone was without any physical clash with the U.S. students. The Panamanian students were frustrated and angry at the failure of their mission. Yet it seems likely that the violence which followed could have been avoided if Panamanian authorities had responded promptly to the notification by Canal Zone officials that the students would soon be leaving the Zone, and to the request for assistance

in handling the students on their return to the boundary between Panama and the Canal Zone.

In the absence of such preventive action, the students' fury became the spark for mass incursions into the Canal Zone by Panamanian rioters at numerous points along an extended border. The mobs attacked and killed U.S. and Panamanian citizens and burned and looted their properties. A maximum effort by the Canal Zone Police force was required to prevent the mobs from reaching U.S. residential areas. The number and force of mob attacks upon persons and property in the Zone exceeded the capacity of the police to contain them, and at 8:00 p.m. on January 9th, the Commander of the Armed Forces in the Canal Zone assumed responsibility for law and order in the Canal Zone.

For two and one-half days mobs made repeated attempts to penetrate deeply into the Zone. In Panama, buildings and automobiles were burned and looted. Unguarded citizens were attacked. For three and one-half days scores of snipers—some of them armed with automatic weapons—were active against U.S. personnel in the Tivoli Guest House in Balboa, in the Masonic Temple in Cristobal, and in adjacent areas. It was not until January 16th that it became possible to return responsibility for the maintenance of civil order in the Canal Zone to the Governor of the Zone.

During this period when lives and property within the Canal Zone were under violent attack, the response of United States police and military forces was extraordinarily restrained. Events in Colon are illustrative. There, the United States military commander did not approve the use of riot control shotguns until murderous sniper fire, continuing for almost 36 hours, had taken three American lives and wounded 12 more. Tear gas was the standard weapon for control of the mobs. No machine guns or other automatic weapons, tanks, or aircraft were ever used by United States personnel during the riots.

Throughout the period of rioting repeated attempts, through various authorized channels, to secure the cooperation and assistance of the Panamanian authorities in preventing violence or restoring order produced no effective action. Only on early Monday morning, January 13th, did the National Guard move with force. When it did, order was promptly established in both Colon and Panama City and sniper fire ceased.

Throughout this period, by use of public information media, by haranguing the crowds, by organizing demonstrations, and by well-equipped and organized sniper fire, leftist extremist elements sought to stimulate and maintain violent attacks on U.S. property and lives.

By the end of the riots, five had died in the Canal Zone. There were over 200 United States casualties.

Part II of this presentation discusses the size and capabilities of the civilian security forces of both the Canal Zone and Panama. Read in light of factual background, it underscores the tragedy of the Panamanian Government's failure to support Canal Zone civilian authorities in stemming the violence.

Part III sets forth numerous examples of the effort of the Panamanian news media to incite the Panamanian public to mob action.

Part IV offers some evidence of professional, extreme leftist agitation to intensify and prolong the mob violence.

Part V sets forth the toll in lives and property that resulted from the events of January 9th, 10th and subsequent days.

Finally, Part VI details some of the extensive damage to the property of United States citizens and threats to their lives in areas in Panama far from the Canal Zone border.

The picture presented is not a pleasant one. The United States found itself faced not only with rioting mobs within

the Canal Zone and with snipers killing and wounding its citizens, but also with the extraordinary charge that the United States was an aggressor in this affair.

These events having been investigated, it is the firm hope of the United States that both countries can move forward toward the re-establishment of a sound and friendly relationship.

Part I—Chronology of Events

This part of the report is a statement of the background and events related to the flag incident at Balboa High School, the demonstrations of Panamanian students in their march through the Canal Zone on the afternoon of January 9, 1964 and the extensive rioting and violence in the Canal Zone and Panama by residents of Panama that commenced before the students had returned.

The account begins with the initial raising of the Panamanian flag alongside the United States flag in Ancon, Canal Zone, on September 21, 1960 and extends through the period of rioting and violence that commenced January 9, 1964.

1. *Background of the Flag Incidents.*

The flying of the Panamanian flag in the Canal Zone has been a subject of discussion between the United States and the Republic of Panama for a number of years. For purposes of this report it is sufficient to begin with the year 1960 when the Panamanian flag first was flown in the Canal Zone on a daily basis alongside the United States flag.

President Eisenhower, on September 17, 1960 directed that the flag of the Republic of Panama be flown regularly at a single location as a unilateral act on the part of the United States Government in recognition of Panama's titular sovereignty over the area. On September 21, 1960 the two flags were raised in Ancon, Canal Zone, at Shaler

Plaza near the Republic of Panama boundary, and, except for a short time during the recent disturbances, they have flown there continuously.

The Government of Panama continued to urge that its flag be raised at additional locations in the Zone, and this aspiration was a subject of discussions between the Presidents of the two countries when President Chiari of Panama visited Washington, D. C. in 1962.

On June 13, 1962 Presidents John F. Kennedy of the United States and Roberto F. Chiari of Panama issued a joint communique stating that they were appointing high level representatives to discuss points of dissatisfaction between the two nations. Ambassador Joseph S. Farland and Governor Robert J. Fleming, Jr. were appointed by President Kennedy and Foreign Minister Galileo Solis and Dr. Octavio Fabrega were appointed by President Chiari.

The communique stated, in part, that the Presidents had "agreed that their representatives will arrange for the flying of Panamanian flags in an appropriate way in the Canal Zone."

The flag question was the first substantive matter discussed by the Special Commission. Governor Fleming with the concurrence of Ambassador Farland developed a list of 15 sites at which the United States and Panamanian flags would fly together in the Canal Zone, including Shaler Plaza where, as already noted, the two flags had been flying since September 21, 1960. The list of locations for the dual flags was presented to Panama at a meeting of the Commission on July 20, 1962. This original list of sites did not include any schools. Panama did not suggest any additions or deletions, and did not raise any question about the schools.

When the new Thatcher Ferry Bridge across the Panama Canal was dedicated on October 12, 1962, United States and Panamanian flags were flown at each end of the center span. These flags have flown 24 hours a day ever since.

On October 29, 1962, in further implementation of the agreement, dual flags were raised on twin poles before the Administration Building at Balboa Heights, and on November 1, 1962, at the Administration Building at Cristobal. This followed public announcement of the agreement on flags by President Chiari in an address to the Panamanian National Assembly on October 1, 1962.

On January 10, 1963, the Special Commission issued a statement reading in pertinent part as follows:

"It has been agreed that the flag of the Republic of Panama will be flown together with the flag of the United States of America on land in the Canal Zone where the flag of the United States of America is flown by civilian authorities. Private organizations and persons in the Zone are free to display flags at will over their places of residence or business. Other aspects of the flag question will be discussed later."

During the first nine months of 1963 no action was taken to raise additional Panamanian flags because a suit had been brought in the United States District Court in the Canal Zone for an injunction to prohibit the flying of dual flags. This suit was dismissed on July 8th; on September 27th the time for appeal expired without an appeal having been filed.

Thereafter, the Governor directed that the dual flags be flown at the remaining selected sites. This was carried out in accordance with a schedule which would permit completion of the installation of all poles by February 7, 1964. As each set of poles was erected, the two flags were immediately raised at the following locations:

Canal Locks at Miraflores	October 24, 1963
Canal Lock at Gatun	November 9, 1963
Coco Solo Hospital	November 15, 1963
Corozal Hospital	November 30, 1963
Palo Seco Leprosarium	December 4, 1963
Town of Margarita	December 18, 1963

In the meantime the list of 15 locations for the two flags was increased to 17 by reason of the Governor's addition of sites at two cemeteries, which had been mentioned but not specifically included at the time of the original list. In November 1963 the Governor also gave consideration to dual flags at the four high schools. The question was discussed informally with leaders of the Canal Zone Civic Council and with senior officials of the Panama Canal Company and Canal Zone Government. It became apparent that the issue of displaying the two flags at the schools was an extremely emotional one.

It was the consensus that such a display might cause friction between national groups at the schools. This position was consistent with the informal opinion received from school officials in 1962 when the question of flag sites was first considered. The Governor therefore decided that the list of 17 locations should not be further increased.

On December 30, 1963 the following press release was issued by the Governor:

"On and after January 2, 1964 the Panamanian flag will be flown together with the flag of the United States in civilian land areas in the Canal Zone where the United States flag is flown by civilian authorities.

"This action implements the understanding made public in a joint communique issued by the two Governments earlier this year which stated that 'the flag of the Republic of Panama will be flown together with the flag of the United States of America on land in the Canal Zone where the flag of the United States of America is flown by civilian authorities. Private organizations and persons in the Zone are free to display flags at will over their places of residence or business.'

"For some time the Panama Canal has been erecting dual flagpoles at selected sites. Work has been com-

pleted and the two flags are now flying at 11 of the sites. Dual flagpoles will be erected at five additional sites between now and the early part of February. One further location at which the two flags will fly will be the new Gorgas Hospital addition when it is completed later this year.

"The 11 locations where the two flags are now flying are Shaler Plaza, Thatcher Ferry Bridge, the Administration Building in Balboa and also at Cristobal, Miraflores and Gatun Locks, Coco Solo and Corozal Hospitals, Palo Seco, Margarita and Coco Solo. The five remaining locations in addition to the new Gorgas Hospital addition are Gamboa-Santa Cruz, Rainbow City, Paraiso, Mount Hope Cemetery and Corozal Cemetery. Locations at which the United States flag has currently been flown alone and at which no flags will be flown on or after January 2, 1964, are the schools; the Ancon District Court Building; the Industrial Division, Cristobal; a site in Gamboa which will be replaced by the site for the two flags; and the present Gorgas Hospital.

"In accordance with law and customs requiring the United States flag to be displayed in or near schools, the United States flag will continue to be displayed in classrooms or elsewhere within the schools as at present. The Panamanian flag will continue to be displayed with the U.S. flag in all Latin American schools and in certain other schools as appropriate, following present practice."

2. Flag Incidents at Balboa High School.

Schools reopened on Thursday, January 2, 1964 after the Christmas holiday. During the first few days of the new school period students at Balboa High School began to protest the discontinuance of the flying of the United States flag outside the school. On Friday, January 3d, a

petition to President Johnson protesting the absence of the flag was circulated at the school and signed by 400 to 500 students. On the same day notice was taken of the matter in radio commentary from Panama. On a regular program, called *El Socialista* (Ex. B, p. 1), it was stated that the "invaders" of Panamanian territory had decided to mock Panama by eliminating the United States flag from every possible site instead of putting up a staff for the Panamanian flag to fly alongside it. This was described as a systematic refusal to recognize Panamanian rights.

In the newspaper *El Dia* on January 7th (Ex. C, p. 12), Celso Solano, former secretary-general of the now outlawed Partido del Pueblo, referred to "aggressions" which the Canal Zone continued to make against the flag and the country of Panama. He said the act of eliminating flagpoles was to evade the obligation of flying the flag of Panama alongside that of the United States and was a crude, offensive and dangerous trick.

At about 6:00 a.m. on Tuesday, January 7th, two Canal Zone policemen were sent to Balboa High School because school officials had learned that the students planned to raise the United States flag that morning. The police had orders to maintain order and prevent any damage to Government property. By 6:40 a.m. about 25 students had arrived and the number grew quickly. The students found the halyards locked so they made several unsuccessful attempts to climb the pole. The number of people grew until 200 to 300 students and about a dozen adults were present. The majority were calmly observing the group of approximately 80 students around the base of the pole. The students finally loosed the halyards and raised the flag at 7:25 a.m. After the flag was raised, the students reported to their classes which started at 7:45 a.m. Attendance was normal. A few adults and students remained in the area across the street from the school.

Shortly after the flag was raised, the Civil Affairs Director of the Canal Zone Government, B. I. Everson, and the Acting Superintendent of Schools, Frank Castles, came to Balboa High School. These United States Government officials and the principal of the school, David Speir, lowered the United States flag at 8:20 a.m. and took it to the principal's office.

When the first class period ended at 8:38 a.m., a group of students again gathered around the flagpole. They proceeded to raise another small flag on the pole. About 150 students were then on the school steps or lawn and they recited the pledge of allegiance to the flag. A number of adults were in the area and the school officials were present. No effort was made to prevent the students' action because the Governor did not wish to have an incident involving use of force to prevent United States students from raising the United States flag outside their school building and pledging allegiance to it. It was believed that the problem could be satisfactorily resolved in some way such as flying both flags.

During the morning a small group of students and adults kept watch near the school grounds. At noon the students substituted a larger flag on the pole. After classes ended at 2:45 p.m. about 100 students and adults remained in the area until evening to prevent removal of the flag or pole. At 6:05 p.m. the flag was lowered by six high school boys. About 25 students remained on watch all night and were furnished food and blankets by other persons.

On January 8th, radio station Miramar in Panama reported that there was great emotion in the dispute between Panama and the Canal Zone and predicted that differences between students in the two jurisdictions would become worse (Ex. B, p. 2). On the same day a newspaper columnist wrote in *El Dia* that the Canal Zone authorities were tricking the Panamanians out of the right to fly their

flag in the Canal Zone by eliminating flying the United States flag (Ex. C, p. 13).

At 7:45 a.m. on Wednesday the flag was again raised by the students. The situation remained about the same and a small group of adults and students, some from the Canal Zone College, remained all day across the street from the high school.

After school closed Wednesday afternoon, about 200 students walked around the flagpole and on the school grounds with placards and signs stating their desire to keep the United States flag flying in front of Balboa High School. During the day United States flags had also been raised at the high school in the town of Coco Solo at the Atlantic end of the Canal Zone and at various elementary schools. This was done by groups of high school students that were accompanied by parents or other adults in some cases.

Also on January 8th, the Governor, concerned about the situation, issued a statement appealing to the Canal Zone public for cooperation. He reviewed the background of the dual flag program and said:

"I believe that it is unnecessary for me to dwell at length on the responsibilities of U. S. citizens to abide by the official commitments of their government. I would, however, like to emphasize that we have a particular responsibility here in the Canal Zone where our actions are subject to direct view by citizens of other countries.

"I request the cooperation of all U.S. citizens at this time in honoring our country's commitments and in showing our good faith by our own actions. We must set the example and some recent actions have not been good in view of an international commitment of the United States.

"At the same time, I will say that the list of official locations at which the two flags are to be flown is not final and absolute. Should the various communities desire dual flag displays at other locations, it is possible that we can make appropriate additions in consonance with our international commitment. In this regard, I would look to the Civic Councils for advice as to the wishes of the communities."

The next morning, Thursday, January 9th, the Governor prepared another statement reviewing the discussions with Panama and explaining the nature of the commitment by the United States to discontinue the display of the United States flag unless flown with the flag of Panama. In part, his remarks read as follows:

"... the flag agreement is a valid commitment of our government. We Americans in the Zone have an obligation as citizens to support that commitment regardless of our personal beliefs. I hope that we Americans will conduct ourselves with reason, and in an emotional situation successfully avoid emotionalism."

This statement by the Governor was broadcast at 6:15 p.m. as scheduled.

The Panamanian press and radio stations on January 9th continued to feature news stories about the situation at Balboa High School that were either false or misleading and were apparently calculated to arouse emotions against the United States and against the United States students in particular. (Ex. B, pp. 2, 3, 4; Ex. C, p. 15)

3. Panamanian Student March to Balboa High School.

At about 4:40 p.m. on Thursday, January 9th, a group of Panamanian students entered the Canal Zone on 4th of July Avenue in the town of Ancon for a march to Balboa

High School (Ex. P-M1, P-M2). Their march was unannounced and unexpected insofar as Canal Zone authorities were concerned.

About 200 persons, most of whom appeared to be boys and girls in uniforms of the Panamanian High School, Instituto Nacional, moved along Gorgas Road marching in a column of several persons abreast. They carried small Panamanian flags, a single large Panamanian flag of a silken material bearing the shield and the name of the Instituto Nacional in its center, and the banner of the school's Student Federation. They also carried a number of provocative signs and placards of various sizes bearing slogans such as the following:

PANAMA IS SOVEREIGN IN THE CANAL ZONE

FLEMING GO HOME

**PANAMA IS NOT A PROTECTORATE, IT IS
FREE AND SOVEREIGN**

THE PANAMANIAN FLAG ONLY

(See Ex. P-1).

The marchers headed for Balboa High School by Gorgas Road, a route that took them around Ancon Hill, past Gorgas Hospital, past the residences of Governor Fleming and of some employees of the Canal agencies, to the site of the Canal Zone Administration Building, a total distance of about one mile. At the Governor's residence they paused and sang the national anthem of Panama (Ex. P-2), then continued their march. Some chanted "Gringo Go Home!" They proceeded around one side of the Administration Building, down a long flight of more than 100 steps, and past the Goethals Memorial to an area near the fire station, which is a short distance from, and within sight of, the Balboa High School. In descending the long flight of steps, the students passed between the

twin flagpoles in front of the Administration Building from which were flying the flags of both Panama and the United States (Ex. P-3).

The Panamanian students were stopped by a squad of about 12 Canal Zone police officers on instructions from Acting Governor David S. Parker so that Police Captain Gaddis Wall could talk to them. The police had been directed to refrain from the use of force in anticipation that the students would remain orderly and cooperative.

Captain Wall, the district police commander at Balboa, talked with members of the group where it had been halted by the police. He spoke through an interpreter fluent in Spanish (Ex. P-4). He was joined by Balboa High School principal, David Speir, and school division official, Frank Castles. At this time the spokesman for the students, Guillermo Guevara Paz, was talking to Captain Wall. Mr. Speir was informed that a delegation of the Panama students wanted to talk to the Balboa High School students. He suggested that the school library would be the most suitable place, and he walked at once the short distance to the high school where he instructed the Canal Zone students to move into the library located on the second floor of the high school building. He emphasized the importance of showing every courtesy to the Panamanian delegation that wished to speak to them. Most of the Canal Zone students present went into the building and upstairs to the library. In the meantime, more people (both adults and children) were gathering on the school lawn.

The delegation from the Panamanian students did not, however, come to the high school. Rather, they informed Captain Wall that they wished to go to the Balboa High School flagpole for the purpose of raising the Panamanian flag from the National Institute which they were carrying. They wished to put it on the pole with the United States flag, which was flying at the time, and to sing their national anthem.

After some discussion with the students, Captain Wall proposed that a small group be escorted to the flagpole in front of the Balboa High School, where they could sing the national anthem and display their flag, after which they would be expected to remove the flag and return peaceably to Panama.

A student who addressed Captain Wall in English said there were about 14 radicals in the Instituto Nacional group who were not in accord with this plan but that he would try to persuade them to accept this agreement. After discussion among the Panamanian students, and despite some loud objections from some of them led by an adult Panamanian, Captain Wall's proposal was accepted. (During the discussions with the student spokesmen, Captain Wall and the other policemen were being insulted and vilified continuously by individual students in the crowd.)

While the small group was being formed to march to the high school flagpole, a number of the Canal Zone police noticed that the large Panamanian flag of the Instituto had a split at the top extending downward a few inches. At least one of the Panamanian students called attention to the split, and a Canal Zone policeman offered the use of a small medal he was wearing as a pin to close the opening temporarily. The offer was declined. According to a published report attributed to one of the students from the Instituto Nacional, the flag had been used in student movements in 1947, 1958, and 1959. Official photographs taken before the student delegation moved to the high school flagpole show a tear (Ex. P-5).

Toward the Flagpole

Six of the Panamanian students left the main group and were escorted by the police to the Balboa High School lawn near the flagpole (Ex. P-6). Four of them carried the flag, holding it by its top edge in front of them. One of the flag carriers grasped both edges of the split in one

hand, keeping it closed (Ex. P-7). Of the other two students in the delegation, one carried the Student Federation banner on its staff, and the other held a placard reading: "Panama is Sovereign in the Canal Zone." During the walk the lower fringe of the Panamanian flag touched the ground and was stepped on several times by the Panamanian students. A Canal Zone police officer cautioned them, "Pick up your flag," but the students did not indicate that they understood.

On the high school lawn there was a large group of people (presumably United States citizens for the most part) including men, women, and children of all ages. Mr. Speir explained to them what the Panamanian student delegation planned to do and emphasized the importance of maintaining a courteous and dignified atmosphere. As the delegation approached, about 30 Balboa High School students seated themselves upon the steps around the base of the flagpole and refused to move when requested to do so by Captain Wall. There was silence until adults started chanting, "No, no, no." This chanting was picked up by the Balboa High School students.

In the vicinity of the flagpole the Panama students posed with their flag and banner while a photographer took pictures of them. Captain Wall and the high school principal cautioned the delegation to carry out their ceremony peacefully. At this point the students stated that their real intention was to raise their flag on the flagpole. Captain Wall pointed out that there was only one flagpole and that the United States flag was already flying there. The Panamanians insisted that they raise their flag. They suggested that the United States flag be lowered and their flag be attached to the same place as the United States flag and that the two flags be raised simultaneously.

About this time the United States citizens began singing the United States National Anthem. This appeared to increase the resentment of the Panamanian students, and

they stated harshly that, if they could not hoist their flag, they would not continue with the ceremony (Ex. P-8). The United States officials attempted to reason further with the Panamanians, but the delegates' anger increased. One of them ran back to the waiting crowd across the street, apparently to consult with them. He returned in a few minutes and announced that they were not going to have the ceremony. After further attempts at reasoning with the Panamanians proved futile, Captain Wall feared that violence would inevitably result from the continued confrontation of the United States citizens and Panamanians. He, therefore, announced that the ceremony was cancelled and told the Panamanian students that they would have to leave.

Panamanian Students Moved Back

The Panamanian students refused to leave, whereupon Captain Wall directed the uniformed policemen to move them and their banners back to join the rest of the Institute students across the street. The flag bearers refused to leave the area, and the police officers moved them back across the street by walking against them with the police riot sticks held horizontally at chest height. As the delegation was moved back out of the school area, an adult (believed to be a United States citizen) attempted to seize the staff of the Panamanian school banner being carried by one of the students, but he was intercepted and removed from the group by Canal Zone police. During the movement of the delegation back to the fire station, the Panamanian flag was not torn by any of the United States citizens and it remained in the hands of the Panamanian students as they resisted the slowly-moving line of policemen.

As the Panamanian students were leaving the immediate area of the flagpole, a United States schoolgirl fell to the ground. A United States student, thinking that a Pana-

manian had pushed the girl, raised his hands toward the Panamanian he believed to be responsible, but he was shoved away by a policeman before he could strike the other boy. A photograph of this incident was published a few days later in *The Panama American*, a Panama City daily newspaper, together with text asserting that the United States student had been tearing at the Panamanian flag (Ex. P-9, P-10).

During these activities near the flagpole, the majority of the Panamanian students across the street were orderly and quiet, but in the center of the group there were 15 or 20 older students who were yelling and waving their arms.

Captain Wall and Principal Speir both said that, based on their personal observations, no Canal Zone policeman tore or ripped the Panamanian flag. They observed that a tight cordon of police surrounded the Panamanian student delegation and separated it from the United States students. They concluded that the four Panamanian students holding the flag tore it themselves during the scuffle.

In the confusion at the flagpole, two of the four Panamanian flag bearers stumbled but held tightly to the flag, which appeared to give under the stress and parted along a seam (Ex. P-11). When the two students regained their footing, still holding the flag, a Canal Zone policeman noticed that the flag was ripped from the top down the middle almost to the top of the coat of arms emblem (Ex. P-12). On seeing that their flag was torn, one of the Panamanian flag bearers said, in Spanish: "Now you caused us to tear our flag."

When they reached their companions, the delegates held up the flag and stated: "Look what they did to our flag!" A roar went up from the main body of Panamanian students, and the student agitators commenced shouting loudly and surging against the police line. Within the group there was noisy agitation and some stones were thrown, one of

which struck a policeman in the forehead, piercing his helmet liner.

Hoping to get the Panamanian students out of the Canal Zone without incident, Canal Zone officials had arranged for some Government busses to be sent to the vicinity of Balboa High School, to stand by and provide transportation to Panama City for the Panamanian students. The Panamanian students refused this transportation and began to shout: "To Panama, to Panama! To the University, to the University!" This was about 6:30 p.m. These events at the high school had lasted more than an hour. The Panamanians leaving the school broke into two groups, one walking on Gorgona Road toward the Balboa Heights railroad station while a larger group began running up the steps leading to the Canal Zone Administration Building. There were shouts of "Let's take down their flag!" A number of Canal Zone policemen climbing the building stairs behind the students were targets for stones. Some of the students shouted insults and obscenities at the Canal Zone employees.

Some of the Panamanian students tried to haul down the United States flag but were stopped by Canal employees.

Members of a Panamanian group led by adults shouted in English to the effect: "You will die for this; you will live to regret it."

Rioting Begins

The Panamanian students then commenced deliberate damage to property.

The students broke a number of Administration Building windows. They stoned automobiles. They surrounded an automobile being driven down the Heights Road hill by a U.S.-citizen woman employee of the Panama Canal. They beat on the car and shouted in Spanish: "Kill her! Kill her! The Gringa is very bad!" They shook the car, caus-

ing the driver to fear the vehicle would be overturned. The woman finally escaped and drove to Balboa where she suffered a nervous collapse.

The students were now an unruly crowd running and milling in and out of the street. They continued along Heights Road and Gorgas Road breaking street lights and automobile windows with stones, and overturning large trash cans on the way.

Units of the Canal Zone police followed slowly in automobiles and on foot a short distance behind. They were under orders of the Acting Governor not to arrest the Panamanian students for damaging property as long as the group continued to move toward the Panama City boundary.

As the students passed Gorgas Hospital, several of them threw stones at the patients' windows. On passing the new section of Gorgas Hospital that was under construction, the Panamanian students tore down a large section of scaffolding on the outside of the building and threw it into the street, making a barrier that had to be removed before the following police cars could pass. Some of the rioters entered the partially-completed building, climbed to the upper floors, and threw down building materials including pieces of lumber and bags of cement. The students then stoned and broke windows in the office of the Treasurer of the Panama Canal Company, farther down Gorgas Road. They knocked down and kicked a United States pedestrian. The violence of the students increased as they neared the Panama boundary (Exs. P-M1, P-M2).

4. Requests for Support from Panamanian Authorities.

Before the students reached the "J" Street intersection on their way back to the Instituto Nacional it became apparent that strong support from the Panamanian Government and the use of the Panama National Guard in the

adjacent areas of Panama would be essential if order were to be restored.

Between 6:30 p.m. and 8:00 p.m. eight calls were made for National Guard support: (1) At 6:38 p.m. the Canal Zone Police Chief directed a call to Major Urrutia, Third Commander of the Panama National Guard; (2) the police station radio dispatcher called Major Urrutia three times; (3) Captain Wall twice directed calls for assistance; (4) a representative went to Headquarters and talked to the Commander, Colonel Bolivar Vallarino at 7:22 p.m.; (5) at 8:00 p.m. Panama Canal Information Officer, Frank A. Baldwin, talked to Colonel Vallarino.

These calls for support from Panamanian authorities were made direct to the National Guard in accordance with established procedures. Although support was promised, it was not sent.

Attempts to obtain assistance from the Government of Panama were also made through diplomatic channels and, finally, at the highest level in the Republic.

At 6:55 p.m. the Acting Governor of the Canal Zone telephoned the United States Embassy in Panama. In the absence of the Chargé d'Affaires, the Acting Governor, Colonel Parker, talked to the Staff Duty Officer, explaining the situation. The Acting Governor asked that a protest be made immediately to Panama President Chiari that Panamanian students had caused considerable damage in the Canal Zone through their actions, and that it was hoped to get cooperation from the National Guard in handling the students as they left the Zone. Between 7:40 p.m. and 8:15 p.m. the United States Chargé d'Affaires contacted both President Chiari and National Guard Commander Vallarino to urge the Guard's assistance in dispersal of the rioting mobs in Panama along the Canal Zone border.

At 8:45 p.m. Acting Governor Parker telephoned President Chiari personally. He told the Panamanian President

about the situation as it was then developing, adding that the Zone forces had done everything possible to avoid using force, that they had attempted solely to preserve public order and protect life and property. He told the President that it was an extremely serious situation with buildings and cars being set on fire and mobs threatening the Canal Zone housing areas and the Tivoli Guest House. Colonel Parker stated that, due to his inability to maintain law and order within the Canal Zone with police forces alone, there had been no choice but to call on General Andrew P. O'Meara, Commander in Chief, United States Southern Command, to ask him to restore order with military forces.

5. Commencement and Spread of Violence.

The Canal Zone-Panama City boundary extends along a curving line from the Panama Railroad Freight House on the north, past the Tivoli Guest House, south past the Ancon School, then southwesterly past the Instituto Nacional (in Panama) and the District Judge's residence, to the approaches of the Thatcher Ferry Bridge, a distance of a little less than two miles (Exs. P-M1, P-M2).

As of 4:40 p.m. when the Panamanian students began their march to Balboa High School there were 20 policemen on duty in the Pacific district of the Canal Zone. By 8:00 p.m. the uniformed force on duty had been increased to its total available force of 81 men. One additional man reported at 9:00 p.m., bringing the total to 82. The force was continued at that level until the early morning hours of January 10th.

At 6:35 p.m. (prior to the return of the Panamanian students from Balboa) a group of men turned over a small car on 4th of July Avenue opposite the Instituto Nacional and about 50 to 75 yards to the east of the Canal Zone residence of the United States District Judge. The same

men then took a second car from the curb, rolled it out and set fire to it. These men were older than students and were not dressed in student uniforms. The crowd moved in the direction of the Gorgas—"J" Street intersection and then came running back to the area in front of the Instituto. Some began to throw stones over the fence at the home of the District Judge.

The disturbances then spread in both directions along the boundary. On the basis of police reports being received at the Canal Zone Administration Building, Acting Governor Parker called the Staff Duty Officer at United States Southern Command at 6:50 p.m. and suggested that troops be alerted. At 7:18 p.m. Acting Governor Parker again called the Staff Duty Officer and stated that the situation was under control at the moment and that he saw no necessity for moving troops. He added that the situation might change at any moment. Acting Governor Parker again called the duty officer at the U.S. Southern Command at 7:25 p.m. and reported the situation was becoming more serious and there was every indication that military assistance would be required.

At 7:45 p.m. the Acting Governor, accompanied by three other Canal Zone Government officials, made a reconnaissance of the border in the vicinity of the Tivoli Guest House. By that time a crowd estimated at about 3,000 was along Kennedy Avenue. Canal Zone police were having great difficulty containing the crowd which had penetrated well into the Canal Zone at a number of places, and it was apparent that life and property in the Canal Zone were in serious jeopardy. No National Guard personnel were in sight.

By this time rioters had already wrecked and burned the facilities in the Canal Zone Bus Service terminal near Shaler Plaza, had torn down sections of the cyclone fence

along 4th of July Avenue running northeast from Judge Crowe's house and attacked the residence of the U.S. District Judge with rocks and Molotov cocktails, had started fires with Molotov cocktails in the freight house and the laundry in Ancon, had ignited a Panama Railroad coach at the Ancon station, and had burned numerous cars at various locations within the Canal Zone, including Culebra Road, 4th of July Avenue, Frangipani Crossing, and the vicinity of the freight house.

At 7:59 p.m. Acting Governor Parker reported in person to General Andrew P. O'Meara, Commander in Chief, United States Southern Command, that he was unable to maintain law and order in the Canal Zone with only the police and civilian authorities. Acting Governor Parker requested that General O'Meara assume command of the Canal Zone.

General O'Meara immediately directed the Commander of the U.S. Army Forces Southern Command to clear the Pacific area of the Canal Zone of demonstrators and to safeguard the borders of the Canal Zone in that area against further disorders. He also directed that the troops in the Atlantic area be placed on a 20-minute alert. Use of tear gas was authorized to prevent mob disorders in the Zone, but use of firearms was not authorized. At 8:30 p.m. the following proclamation by General O'Meara was announced over radio and television:

"Upon the request of the Acting Governor of the Canal Zone I have assumed command of the Canal Zone. All persons not working or living, or attending school in the Canal Zone are directed to leave the Canal Zone immediately. All residents of the Canal Zone not engaged in official duties will return to their place of residence and remain there until further orders. Upon return to a normal situation, announcement will be made over the Southern Command Network"

Immediately thereafter an announcement enjoining residents on both sides of the border to return to their homes was repeated in Spanish and English over a loudspeaker from a small plane. The pilot was under orders to fly over the Zone only and as far as is known the plane never entered Panamanian airspace.

In the course of the next few hours, mobs attempted unsuccessfully to assault the Tivoli Guest House, Ancon Laundry, the freight terminal and loading platform. Rioters also burned and sacked the Pan American Building, and broke windows and looted shops on Kennedy Avenue in Panama City.

By 8:00 p.m. demonstrations had already begun in Colon, Republic of Panama, a distance of 50 miles away on the Atlantic side of the Isthmus. About 9:15 p.m. a crowd of approximately 1,500 came into Cristobal, Canal Zone. The mob proceeded down Roosevelt Avenue to the Cristobal Administration Building where they were allowed to raise the Panamanian flag, without interference from Zone Authorities. The crowd then returned to Colon after breaking windows of buildings and railway coaches along their route. Violence substantially increased as the crowd broke into a large Panama Canal Company Office and Storage Building to loot and destroy its contents. The mobs also broke windows of the Masonic Temple and elsewhere in the area. They then forced an entry into the Cristobal Y.M.C.A. and looted and wrecked the interior of the building.

U.S. Army troops arrived in the Cristobal area at 10:15 p.m. Looters were in the Masonic Temple and Panama Canal Company Office and Storage Building. Troops using riot control formations expelled the looters from these buildings. By 11:30 p.m. the rioters had been cleared from this part of the Cristobal area by the troops.

Armored Personnel Carriers were erroneously identified as tanks by the Panamanians. These vehicles are designed only for transporting about twelve soldiers each. During the riots, some carriers were used on the Pacific side for transporting troops; however, as soon as this was accomplished the carriers were withdrawn well to the rear of the border. Only a machine gun is mounted on an Armored Personnel Carrier. No machine guns were employed by United States troops during the riots, and in fact no machine gun ammunition of any kind was issued.

A detailed account of the major incidents of violence and disorder along the border at both sides of the Isthmus on January 9th and subsequent days is presented in the following sections of this part of the report.

6. Rioting near District Judge's Residence, January 9th.

By about 9:30 p.m. the Panamanian mob, with the use of wire-cutting tools, had taken down the cyclone fence on the Canal Zone side of 4th of July Avenue which runs from "J" Street to a point beyond the Judge's house (Ex. P-16). They were throwing Molotov cocktails against the house. The Judge, with the aid of several Canal Zone policemen, put out the resulting fires, despite a barrage of rocks. A second attack with fire bombs set three new fires, two of which were put out. The third could not be reached because of the fusillade of rocks thrown by the mob. A Canal Zone fire rig arrived, but also was prevented from approaching, due to the rock-throwing. At this point police reinforcement arrived with two shotguns. The officers fired several shots with their weapons into the air and into the ground, and the mob retreated across 4th of July Avenue into Panama. The firemen thereupon put out the last fire.

The mob then pulled several automobiles into the Canal Zone from "H" Street in Panama City and burned them on 4th of July Avenue (Exs. P-17, P-18).

7. *Rioting Near Instituto Nacional, January 9th.*

A few blocks farther north, at the Gorgas-"J" Street intersection of 4th of July Avenue, rioting against the Canal Zone began about 6:50 p.m. with the return of the Instituto Nacional students from their demonstration at Balboa High School. Earlier a noisy crowd of adults had assembled near the Institute. When the students arrived, moving down Gorgas Road into the crowd at the intersection, they carried rocks, pieces of lumber and other missiles picked up at the Gorgas Hospital construction site and elsewhere along the way. These students, with assistance from adults in the crowd, demolished the traffic lights at the intersection (Ex. P-19) and stoned Canal Zone police who had formed a line a short distance away on Gorgas Road.

Within a few minutes the crowd had destroyed the traffic control standards and street lights in the vicinity (Ex. P-20). The students then moved in a body to the Instituto Nacional. In a few minutes they re-entered the street and violence increased.

From within the crowd several groups appeared carrying gallon bottles of gasoline. Some carried ~~smaller~~ bottles of gasoline for use as Molotov cocktails. Soon the crowd began to stone vehicles passing on 4th of July Avenue and to set parked cars on fire.

A car driven north on 4th of July Avenue by a Balboa High School girl was stopped by youths near the Instituto, along with the automobile that preceded it. The forward car, bearing a Panama license plate, was permitted to pass but the girl's car, which bore a Balboa High School sticker and a Canal Zone license plate, was attacked. The youths were heard to shout "Gringa!" and some rioters threw stones that dented the body of the car. A section of 4 x 4 timber was thrust through the rear window before the girl was able to maneuver the car into Gorgas Road out of range of the rioters (Ex. P-21). Similar incidents, involving at-

tack upon other Canal Zone licensed vehicles, occurred in rapid succession.

By 7:30 p.m. the mob, with its center at the Gorgas-"J" Street intersection had grown to at least 1,500 persons. With the street strewn with debris and burned-out cars, the rioters moved farther into the Canal Zone to attack the cyclone fence running parallel to 4th of July Avenue from Gorgas Road south. The fence was pulled and shaken until loosened from its pipe and post foundation. Shortly thereafter, three or four students came up on to Culebra Road and attempted to set fire to automobiles parked there. The Canal Zone police drove them off by firing tear gas and, in turn, were the target of rocks thrown by the crowd in the intersection below. At least one of the police injuries occurred at this point.

About 9:15 p.m. a U.S. citizen was attacked in his car by a mob on 4th of July Avenue at Domingo Diaz Street, a block from the Gorgas-"J" Street intersection. He was dragged from his car, beaten, stoned and clubbed. Officers in a Canal Zone police squad stationed on a knoll overlooking the scene were ordered to fire their revolvers in the air and on the ground in front of the mob. This caused the mob to fall back and two policemen, staying within the Canal Zone, rescued the victim. The rioters returned to burn his vehicle and turned it over to use as a barricade.

8. Rioting in Ancon Railroad Station Area, January 9th.

Shortly after 7:45 p.m., a large mob moved northward within the Canal Zone along Kennedy Avenue past Shaler Plaza to the Frangipani intersection near the railroad station and freight house. At this intersection there had been a crowd of people from early evening. At first they were relatively orderly, but then, they began attacking automobiles with stones and Molotov cocktails. One car was struck on the windshield. It burst into flames and stopped. The

passengers, a woman and two men, were dragged out and attacked with sticks, pipes, stones, and machetes. The next car with two men in it was also stopped and set on fire. The mob beat one man on the head with sticks, but the other ran and escaped. A third car was stopped and all of its windows were broken. The two male occupants were dragged out.

An automobile, with two men and one woman, was stopped at the dead-end barrier at the entrance to Frangipani Street. About 14 rioters rocked the car, overturned it, poured gasoline on it and set it on fire (Ex. P-19). Its occupants also were dragged out and beaten.

Meanwhile, a mob had arrived at the Frangipani intersection, bringing the number of rioters in the area to more than 2,000. The Canal Zone police detail in the area took up a line across Frangipani Street and adjacent areas to the sides in order to prevent the mob from overrunning the Ancon housing area, which was a short distance behind the police.

Part of the mob surged forward, throwing rocks at the police, while others broke windows in the laundry. The police fell back toward the nearby residences and then used tear gas. The crowd retreated to the laundry area and the railroad station and attempted to set fire to the laundry (Ex. P-20). They also set fire to the railroad station and some railroad coaches. When a Canal Zone fire rig arrived on the scene, firemen were stoned. Part of the mob continued to attempt to set fire to the railroad coaches with Molotov cocktails while others looted consigned freight in the railroad station.

The police by this time had exhausted their tear gas, and having no other means to protect the residents of the Ancon housing area, shot over the heads of the mob. Each of the several attempts made by the mob to force its way into the area was repelled by Canal Zone police.

gunfire directed over their heads or, when this failed, into the ground in front of them.

A segment of the mob tried to flank the police line by moving past the laundry along Roosevelt Avenue toward the Ancon Little Theater, where a play rehearsal was in progress. The four policemen present had used all their tear gas in attempting to stop the rioters. As a last resort, one of them drove the rioters back toward Frangipani by firing over their heads several times with his shotgun.

Part of the mob turned its attention to the freight house. Several rioters attempted to climb the wire fence. Molotov cocktails were tossed against the freight house and onto the loading platform. Shots were fired over the rioters' heads to drive them back while a fire sergeant extinguished the fires at the freight house caused by Molotov cocktails.

About ten rioters who had been throwing fire bombs into the freight yard pushed a burning automobile into the area and used it as a shield to protect themselves as they came nearer to throw more Molotov cocktails. A police officer armed with a shotgun and No. 7½ birdshot shouted at the rioters in both English and Spanish to get away, but they answered with curses and continued to push the burning car. The police officer then fired three shells over the rioters' heads, calling warnings and pausing between the shots. After the third round the men fled.

At this time a man running from "M" Street carrying a lighted Molotov cocktail took cover behind another car. The police officer called to him to leave and not to throw the fire bomb. The man did not move. The officer fired one shot over the automobile, again ordering the man to withdraw. The man crouched behind the auto. The officer fired into the concrete roadway about 25 feet short of him. Four other men walked over slowly, signaling that they were coming to help the injured man. The officer lowered the butt of the shotgun to the ground and told the four

to take the man away if he was injured. They picked the man up and, joined by a few other people from Panama, proceeded toward the crowd on National Avenue, carrying the injured man over their heads. Although a number of Molotov cocktails were thrown into the freight house area subsequently, the fires were quickly extinguished and further use of firearms was not necessary.

About 8:50 p.m. U.S. troops began progressively to relieve Canal Zone Police who were protecting the Ancon Laundry, Ancon Railroad Station, Freight Terminal and freight yard. A crowd estimated to be 2,000 in number was along Calle M in the Republic of Panama opposite the Ancon Laundry. Another crowd of about 500 was adjacent to the fence which encloses the freight terminal and freight yard. They were throwing rocks and Molotov cocktails over the fence in an attempt to set the freight terminal and loading shed on fire. Canal Zone firemen extinguished fires as they were set.

Once the troops were in position and Canal Zone Police relieved, rioting gradually subsided, although automobiles approaching from Panama City were stoned. One Canal Zone car was attacked at 10:40 p.m. as it passed the Olympic Stadium, three blocks distant from the Frangipani intersection. Its windshield was broken and glass splinters flew into the eyes of the woman passenger in the right front seat. The driver accelerated and escaped into the Canal Zone, where emergency medical attention was given the passenger.

9. *Rioting in Area of Tivoli Guest House, January 9th.*

At about 7:40 p.m., rioters moved from the "J" Street-4th of July Avenue intersection along President Kennedy Avenue in the direction of the Tivoli Guest House. Reinforced by about 1,000 persons who entered by side streets from Panama City, the mob proceeded along the Avenue (which is in the Canal Zone) to the Tivoli Guest House and

Legislative Palace area, smashing store windows, turning over cars, and breaking street lights.

At the same time, a large crowd came up "L" Street, which joins President Kennedy Avenue at the Pan American Building. The addition of these groups brought the total number of persons in the Tivoli Guest House area to about 3,000.

At this point, part of the mob attempted to approach the Tivoli Guest House over a low fence diagonally opposite the Pan American Building but was driven back by tear-gas fired by the Canal Zone police, whereupon the mob, remaining within the Canal Zone, moved to Shaler Plaza and the Canal Zone Bus Terminal, which they attacked (Ex. P-21). People climbed to the top of the bus terminal building, ripped the roofing loose, broke windows and doors, and set the burnable inside portions of it on fire.

During this period groups trying to make their way to the Tivoli Guest House over the fence along President Kennedy Avenue were held back by police tear gas. No ammunition was used by the police in the Tivoli Guest House area.

There were no Panamanian fire fighters or members of the National Guard in the vicinity. Earlier in the evening four Guard pickup trucks passed along President Kennedy Avenue and Shaler Road at different times, but the Guard took no action concerning the rioting and destruction of property.

At 8:35 p.m. a company of U.S. Army troops, numbering 110, transported in 2½ ton trucks, arrived at the Tivoli Guest House. Troops dismounted and deployed along the fence in front of the Tivoli Guest House. The rioters, numbering about 500, continued to throw stones and Molotov cocktails at the troops, and the Tivoli Guest House. They were finally dispersed by troops using tear gas.

Troops then secured a line along Kennedy Avenue from the Maryknoll Convent to the Tivoli Guest House and from the Tivoli Guest House to the Ancon Laundry and Freight Terminal.

At 10:30 p.m. U.S. troops in the vicinity of the Tivoli Guest House began receiving sniper fire from individuals stationed in and around the Pan American Building and the Legislative Palace in the Republic of Panama. The Chief of Staff of the U.S. Army Forces Southern Command requested permission to return fire. General O'Meara directed that fire *not* be returned. He also directed that the National Guard be asked by telephone to do something about the sniper situation in the Republic of Panama. This request was delivered by phone to the National Guard through a U.S. Army Liaison Officer, who was stationed in the National Guard headquarters.

By 10:50 p.m. sniper fire coming from the Republic of Panama had wounded one U.S. civilian and two U.S. soldiers. At this time authority was granted to use directed and controlled shotgun fire against identified snipers in the vicinity of the Legislative Palace, Republic of Panama. Shotgun fire was limited to the use of No. 4 and No. 7½ birdshot. Its purpose was to deter the snipers. The Army recognized that the distance between the U.S. troops stationed at the Tivoli Guest House and the snipers was too great to inflict fatal injuries. At this time, there were no Panamanians in the vicinity of the snipers.

At 11:15 p.m. General O'Meara telephoned the Panamanian Foreign Minister, Galileo Solis, to inform him that U.S. troops were being wounded by sniper fire coming from the Republic of Panama and that under the circumstances he had authorized the use of controlled shotgun fire against the snipers. If the National Guard could stop the snipers, however, General O'Meara said he would cause his troops to cease firing immediately. Minister Solis said that he would see that the National Guard were given

immediate orders to seize all snipers and to stop all sniper firing. Based on this commitment, General O'Meara directed shotgun firing to stop. His order was complied with immediately.

Despite the assurance of the Foreign Minister, however, between 11:15 p.m., that evening, and 12:30 a.m., the next morning, sniper fire from the vicinity of the Legislative Palace in the Republic of Panama continued to be directed against the Tivoli Guest House and adjacent areas. By 12:30 a.m., on January 10th, four additional soldiers had been wounded, making a total of six. Accordingly, General O'Meara approved a request for the use of .30 caliber rifle fire by trained marksmen for carefully directed controlled fire as a defense against identified snipers.

The crowd burned several cars in the vicinity of the Pan American Building. One car was driven into the Pan American Building at the ground level on "L" Street (Ex. P-22) and was there set afire (Exs. P-23, P-25). Numerous small fires were started in different areas and levels of the same building. Eventually the mob succeeded in getting a substantial fire started on the first floor at the "L" Street corner. By about 11:30 p.m. the entire building was in flames (Ex. P-24).

10. Rioting on Balboa Road, January 9th.

Beginning in the early evening of January 9th, attempts were made by a large unruly mob at the south end of the Canal Zone-Panama City boundary, to advance up Balboa Road from its intersection with 4th of July Avenue into the heavily populated residential area of Balboa (Ex. P-M1, P-M2). At the outset the crowd, then numbering between 500 and 800 persons, threw rocks at the eight policemen on duty at the intersection. The crowd soon was augmented by approximately 1,000 persons and as a result the police were compelled to fall back farther into

the Canal Zone. At this juncture the mob was also attacking with Molotov cocktails.

At about this time a sniper in Panama opened fire, forcing the police officers to withdraw to a stronger defense position halfway up the Balboa Road hill, about 250 yards from the boundary. The mob pressed forward, destroyed and burned a utilities facility, and a bus stop, and wrecked traffic control signs.

Segments of the mob had broken away and were trying to set fire to a wooden building located within the fenced enclosure of Quarry Heights Military Reservation. The rioters appeared determined to break through the police line; if successful, this would have given them access to the Balboa residential area. Accordingly, the police squad leader ordered the firing of one revolver volley into the ground or over the heads of the mob. At this first gunfire, the mob fell back temporarily. No casualties were observed.

An 11-man police reinforcement arrived as the mob was forming for another advance, and soon the rioters pressed forward up the Balboa Road hill. The reinforced police unit thereupon fired another volley into the air, and the rioters withdrew, again without apparent casualties.

Again the mob formed and advanced. On this occasion the police sergeant in charge prepared his men to fire by shouting the standard formal preparatory commands as used on the firing range. By the time the command "Ready on the firing line" had been given, the mob had begun to retreat and disperse. No shots were fired.

In an attempt to outflank the police, a segment of the mob left the road and climbed the side of an adjacent hill. The sergeant ordered a policeman armed with a shotgun to disperse this group. The police illuminated the area with flashlights before firing to insure that they would not hit any of the rioting mob. Warning shots

were fired into the hillside above and below the rioters. The mob then withdrew toward Panama. There were no apparent casualties.

In the meantime tear gas had been delivered, and was employed to force back the mob. The rioters there barricaded themselves behind garbage cans and sheets of steel torn from a public utility structure in the area. The police officers fired additional tear gas, and the mob retreated from this barricade toward the intersection of Balboa Road and 4th of July Avenue but still remained about 150 yards inside the Canal Zone. The police removed the barricade and withdrew out of rock range, where they remained until relieved by about 60 U.S. Army troops at about 10:30 p.m.

The Army troops immediately moved to clear the mob from the area. Initially the rioters retreated but, as the crowd grew, movement virtually halted. A number of the soldiers were hit by stones thrown from the crowd. In order to break up the mob, only tear gas was used by the troops. This was successful in clearing the area.

Soon thereafter, a mob re-formed and again surged up Balboa Road from 4th of July Avenue in an effort to enter the Canal Zone. Many rocks and Molotov cocktails were thrown at the soldiers. The troops held their positions without fire. Tear gas was again used, and the mob was repelled. By about 10:45 p.m., barbed wire had been installed across Balboa Road to prevent further incidents.

11. *Continuation of Violence at Canal Zone-Panama City Boundary.*

Throughout the early hours of January 10th, troops along 4th of July and Kennedy Avenues continued to be subject to sniper fire (Ex. P-26, P-27) and frequent attacks with rocks and Molotov cocktails. Groups of demonstrators made numerous attempts to enter the Canal Zone. The

troops used tear gas to repel them but at no time did they fire against the mob. Selected U.S. Army marksmen were under strict orders to hold their fire until the crowds had dispersed and the snipers alone could be neutralized without risk to others.

At 6:00 a.m. Friday, all entry points to the Canal Zone on the Pacific side were opened to peaceful traffic from the Republic of Panama. Troops were withdrawn from the border and only two Military Police were positioned at each check point. A brief examination was given to individuals desiring to enter the Canal Zone.

At 11:45 a.m. President Chiari requested that U.S. troops cease counter-sniper fire to permit the National Guard to take action against snipers. General O'Meara ordered cessation of counter-sniper fire. This order was complied with immediately and no subsequent counter-sniper fire was conducted by United States troops on the Pacific side throughout the remainder of the disorders.

At 12:20 p.m., about 800 Panamanians gathered at Shaler Plaza. Cries for a "March on the Zone" were heard, but no march was attempted.

During the afternoon and evening, it became increasingly apparent that the rioters were making the Tivoli Guest House their primary target. Much of the sniper fire was concentrated on that building and a large number of Molotov cocktails was hurled in an effort to set the building on fire. Because of the mob violence it became necessary to evacuate all occupants of the building. The rioters stoned and attempted to burn the building occupied by the Maryknoll Sisters and the Nuns were also forced to evacuate. The Tivoli was also fired upon by the driver of an automobile who stopped on Kennedy Avenue and stood by the vehicle to discharge the weapon.

The first incident that occurred on Saturday morning, January 11th, was on Madden Dam Corridor, which is

the highway corridor under U.S. jurisdiction that runs through Panamanian territory from the Canal Zone to the Madden Dam area, a noncontiguous part of the Canal Zone. An official of a U.S. agency in the Canal Zone, together with three other employees of his agency, was en route from Panama City in an automobile of a Panamanian employee of the agency. They had taken a circuitous route via the Boyd-Roosevelt Highway, which connects with the Madden Dam Corridor Road, in order to enter the Canal Zone by that indirect route rather than attempting to pass from Panama City into the Canal Zone at the Panama City-Ancon boundary. After passing the junction of the Boyd-Roosevelt Highway with the Madden Dam Corridor Road, and while they were on the Madden Dam Corridor Road, they ran into a pre-established roadblock. (The distance from the junction of Boyd-Roosevelt Highway with the Corridor is approximately four-tenths of a mile from the Canal Zone-Republic of Panama boundary, and the incident occurred within that portion of the Corridor.) About 20 thugs appeared from the bushes, armed with clubs and rocks, and surrounded the car. After being robbed of approximately \$110 in cash and other personal property, the United States citizens were permitted to proceed on into the Canal Zone via the Corridor.

During the morning and early afternoon of January 11th, several small groups entered the Canal Zone for a distance of a few yards to plant Panamanian flags and were not interfered with as long as they were orderly. In contrast, there were various instances of desecrating the United States flag by Panamanian rioters by burning, tearing and spitting on it, both in the Canal Zone and Panama City. (Exs. P-28, P-29, P-30, P-31).

At noon a crowd of about 50 persons from Panama assembled on the east approach to the Thatcher Ferry Bridge. The number soon grew to about 500 and they began to stone the living quarters in Balboa near the Bridge. They

broke windows and damaged parked cars which forced the evacuation of residents from the two houses nearest the crowd. Some of the mob broke lighting fixtures on the bridge but the majority advanced toward the fence at the edge of the housing area. They were repelled three times by tear gas thrown by the Canal Zone police and finally dispersed when U.S. Army troops arrived about 12:45 p.m. These troops were continually harassed, however, by stone-throwing Panamanian teenagers who were periodically dispersed by the use of tear gas.

During the afternoon of January 11th, on three separate occasions, about 200 Panamanians entered the Canal Zone in the vicinity of the Tivoli Guest House. Approximately 50 U.S. soldiers used tear gas to disperse each group.

Also, approximately 60 Panamanians entered the Canal Zone at the junction of Gorgas Road and 4th of July Avenue. They were repelled by 40 soldiers employing riot formation and using tear gas.

During the afternoon a car was burned on 4th of July Avenue. In Shaler Plaza a group sawed down the flagpole, and took it into Panama (Exs. P-32, P-33).

Starting at 8:00 p.m. and continuing through the night, automatic weapons and rifle fire from the Legislative Palace and the burned-out Pan American Building was directed at the Tivoli Guest House and nearby buildings in the Canal Zone. Approximately 400 rounds were fired into the Canal Zone from the Republic of Panama during the night. U.S. troops did not return fire.

During the daylight hours of Sunday, January 12th, the border area was relatively quiet except for one mob of about 75 Panamanians which penetrated the Canal Zone between the Tivoli Guest House and the Maryknoll Sisters' Convent. This mob was repelled by tear gas. As had happened on the previous night, at 8:00 p.m. automatic

weapon and rifle fire was again directed into the Canal Zone from the Legislative Palace, and the burned-out Pan American Building. From 8:00 p.m. on the 12th until 4:00 a.m. on the 13th of January, approximately 800 rounds were fired into the Canal Zone from the Republic of Panama.

The period from Monday the 13th, through Wednesday the 15th of January, was also relatively quiet. Panamanian workers moved in and out of the Canal Zone without incident and busses operated normally.

12. Rioting Along Cristobal-Colon Border.

On the Atlantic side of the Isthmus there was relative quiet during the first hour after rioting along the border of the Pacific terminal cities commenced. The first indications of trouble in the Cristobal-Colon area (Exs. P-M3, P-M4) were noted at 8:00 p.m. At that time about a dozen singing, shouting persons, carrying a Panamanian flag, were observed as they marched on Bolivar Street past the front of the Cristobal Armed Services Y.M.C.A.

At 9:14 p.m., a mob of 1,500 persons entered the Canal Zone at the intersection of 11th and Front Streets. The demonstrators proceeded without interference past about 10 Colon National Guardsmen standing near the intersection. The body of demonstrators proceeded down Roosevelt Avenue to the Panama Canal Administration Building. A small group of men broke off from the crowd standing in front of the building, went upstairs, and raised a Panamanian flag on one of the twin flagpoles where, during the day, the flags of Panama and the United States fly side by side. The crowd cheered the flag raising and sang the Panamanian National Anthem. A person, carrying a portable loudspeaker, was denouncing the United States and proclaiming Panamanian sovereignty over the Canal Zone.

The flag-raising ceremony was completed without interference from Canal Zone officials. Thereafter, attempts to calm the crowd were made by various persons, including Captain Howerth, Cristobal District Police Commander, and Daniel Delgado Duarte, Mayor of Colon. Although the mob was not violent at this time, it was unruly and clearly affected by the action of agitators, such as Andres Galvan, a communist leader trained in Cuba, Russia and Red China, and the conduct of certain members of the Colon Municipal Council and labor leaders who were heard to urge violence in retaliation for "what had occurred in Balboa". At 9:30 p.m., the crowd left the front of the building in a disorderly manner and headed north along Roosevelt Avenue to 11th Street in Colon (Exs. P-M3, P-M4).

A group of teenage girls leaving the Masonic Temple after a meeting nearly became enveloped by the mob as it moved past on its return to Colon. A retired U.S. Army Sergeant, residing at the nearby Y.M.C.A., stood by with a shotgun he owned to protect the girls. Without having fired it, he turned his shotgun over to Canal Zone police later that night. Soon after the girls left, a barrage of rocks and other missiles was thrown at the Masonic Temple.

Earlier in the evening a liaison agent from the Cristobal Police Station was sent to Colon National Guard headquarters to inform the Commandant concerning the gathering crowds. The Commandant, Major Bolivar Rodriguez, instructed his second in command, Captain Juan Bernal, to lead a group of National Guardsmen out into the city's streets to attempt to control the crowds.

Throughout the period of the riots, the Cristobal District Police Commander was in frequent telephone communication with Major Rodriguez and Colonel Jose D. Bazan, Second Vice President of the Republic and Chief of the Colon Fire Department. Several hundred U.S.

citizens were evacuated to the Canal Zone by the Colon firemen and a considerable number were brought out by the National Guard.

By 9:45 p.m. a crowd of about 400 persons had gathered at the intersection of 11th Street and Bolivar Avenue in Colon. Held there in check briefly by the National Guard, the demonstrators pressed on down 11th Street to Balboa Avenue. At almost 10:15 p.m., after again being briefly checked by the National Guard, a contingent of the mob surged up Balboa Avenue to a point near the Y.M.C.A. While police officers attempted to calm the forward contingent of the mob, windows could be heard being broken in Panama Canal offices adjacent to the main body of the crowd. The destruction by elements of the mob became more extensive. Windows and doors in the Panama Canal Company Office and Storage Building were broken; furniture was dragged out into the street; and pieces of office equipment were destroyed or stolen (Exs. P-34, P-35). Besides the damage to the Panama Canal Company Office and Storage Building, extensive damage was incurred in the Masonic Temple and the Y.M.C.A. (Ex. P-37).

Part of the mob concentrated on wrecking office equipment, air conditioners, records, medical supplies and furniture in the offices in the Panama Canal Company Office and Storage Building. Typewriters were thrown out into the street. Records, files and supplies were vandalized and attempts made to set them on fire.

While police were preoccupied on Balboa Avenue, other rioters entered the Cristobal Y.M.C.A. on Bolivar Avenue, looted the gift shop, destroyed furniture, and overturned file cabinets (Ex. P-36).

No ammunition was used by the Canal Zone police during the disturbances in Colon.

At about 9:50 p.m., the 4th Battalion, 10th Infantry, composed of about 700 men, moved from Fort Davis to

Cristobal. At 10:20 p.m., the Commanding Officer of Company A, consisting of about 140 men, was given the mission of clearing the Canal Zone in the area of the Panama Canal Company Office and Storage Building, the Masonic Building, and the Y.M.C.A., all of which are grouped together along the Canal Zone-Republic of Panama border.

Moving from the Cristobal dock area, Company A proceeded to the boundary at 11th and Front Streets. As was planned, this initial appearance of the U.S. Army troops in company strength was sufficient to cause a large group of Panamanians to leave this four-block area in the Canal Zone and to retreat down 11th Street and across Bolivar Avenue back into the Republic.

The Army company moved down the first block of 11th Street within the Zone, sealing off the border as they went. The company turned on Balboa Avenue and deployed into a chisel-like, standard riot-control formation to encourage the remaining rioters to go into the Republic across Bolivar Avenue, which was one block to the left of the company.

However, one violent segment of the mob refused to give way as the troops approached. This group, led by Cuba-trained Andres Galvan and his brother, threw rocks and debris at the troops. The troops about to make contact with these rioters were momentarily reluctant to advance for fear of injuring them. Encouraged by this hesitation, a number of rioters attempted to disarm the troops by grabbing at their rifles and bayonets. In grasping the bayonets the Panamanians cut themselves and in the ensuing scuffle a number were injured. Then the troops began once more to advance toward the crowd to clear the Canal Zone.

Other troops, in advancing by the Masonic Building in the Canal Zone, were jumped by about 15 rioters from the second floor windows of the Masonic Building. The

rioters had lead pipes and heavy sticks they were using as clubs. In the scuffle with the troops, several of the rioters received cuts. At no time during either of these incidents did the troops fire their weapons or launch a bayonet assault against the rioters.

As the troops forced the rioters back across Bolivar Avenue into the Republic, a platoon leader was instructed to close off 12th Street where it joins Bolivar Avenue. Up until this time no member of the United States forces had crossed the Canal Zone border into the Republic. However, the junior officer ordered to close off 12th Street, believing that the far curb of Bolivar Avenue rather than the center was the border, led about 15 of his men to the point at which 12th Street joins Bolivar Avenue. He thus inadvertently led this small contingent of his men a few feet into territory of the Republic. Within a few minutes a senior officer, noting the platoon leader's error, ordered him back into the middle of the street. The platoon leader immediately withdrew his troops as directed. While across the boundary, this small contingent did not come into physical contact with the rioters.

At no other time did any United States military or police unit cross the Panamanian boundary, either on the Atlantic or Pacific side.

Though under continuous heavy sniper fire and heavy barrage of rocks, glass, bricks, and Molotov cocktails United States troops in Cristobal were ordered not to return the fire, lest innocent persons be injured in this crowded area. At 11th Street and Bolivar Avenue, a squad leader in Company A was struck by a Molotov cocktail hurled from across the border. Pfc. Peter J. Juino was hit by a .22-caliber bullet in the foot, when his unit was in the process of attempting to drive the rioters out of the Y.M.C.A. At approximately 11:45 p.m., Specialist Paul E. Boyd was hit in the right leg by a bullet that was fired by a sniper.

Sergeant Edward Rodriguez, Jr. was the squad leader of the second squad, second platoon, of Company C, which was in front of the Cristobal Y.M.C.A. He and another member of the unit were sent out as an observation post to relay messages of new activity to the platoon leader. The sergeant was approximately five feet in front of the Y.M.C.A. at an observation post when he was shot in the shoulder by a hidden sniper firing from the République.

Private James E. Willis was shot in the leg by an unseen sniper as he was standing on the line in the riot-control formation in front of the Y.M.C.A. At 1:00 a.m. on January 10th Private David J. Haupt was killed by a sniper firing from the Panamanian side of Bolivar Avenue.

In face of the severe losses from sniper fire, the company commander moved his platoons to buildings just inside the Canal Zone border to provide more protection from the sniper fire.

At 2:00 a.m., Staff Sergeant Luis Jiminez-Cruz of Company B was shot in the head and killed while directing his men to protected positions around a roadblock established at 13th and Bolivar. The men of Company B were pulled further back into the Canal Zone to afford them the protection of buildings, after a sniper shot and killed the company's first sergeant, Gerald A. Aubin, and wounded the company commander, First Lieutenant Alexander H. Evans, while they were checking the positions of the troops at 4:00 a.m.

The U.S. forces never fired ball ammunition in the Cristobal-Colon area except for ten rounds used on the early morning of January 10th to knock out street lights in the Cristobal area which exposed the U.S. soldiers to the bullets of Panamanian snipers. It was necessary for the local commander in the Cristobal area to seek specific approval from General O'Meara, the Commander in Chief,

Southern Command, for firing these 10 rounds at street lights.

A stone-throwing crowd at 16th Street and Bolivar Avenue at 9:50 a.m., January 10th, forced the driver of a Panama Canal moving van to abandon the vehicle there. The van was set on fire.

At 10:00 a.m. an attack of Molotov cocktails was launched against the Cristobal Y.M.C.A., setting the building on fire. Sniper fire hindered Canal Zone firefighters who attempted to control the blaze. Company C, which had taken up positions in the Y.M.C.A. was forced by the fire to evacuate the building shortly after 2:00 p.m., and the second platoon took up sandbag positions in the parking lot behind the Y.M.C.A.

The rioters then shifted their attack to the Masonic Temple, again employing Molotov cocktails. The company was forced to move the command post from the Masonic Temple that afternoon but was able to maintain an observation post on the top floor of the structure.

The Y.M.C.A. continued to be a target for Molotov cocktails during the day. Sniper activities continued at 12th Street and Bolivar Avenue. The barrage of rocks from across Bolivar Avenue at 11th Street in Colon resumed at 11:38 a.m. During this disturbance, a group of people ran a car up on the sidewalk at 11th Street and Balboa Avenue and set it on fire.

A group of about 200 people in the area of 11th Street and the railroad tracks was forced back into Colon by the use of tear gas.

The soldiers who remained in the observation post on the top floor of the Masonic Temple continued to receive heavy sniper fire for two and one-half hours in the evening of Friday, January 10th. That evening at the building of the Cristobal Credit Union, troops of Company B were faced with a group of about 50 people attempting to set

fire to the building. The mob was dispersed with the use of tear gas while Canal Zone firemen extinguished the fire.

U.S. troops, who had exercised the utmost restraint while suffering heavy casualties without returning any of the sniper fire, listened without breaking discipline when a loudspeaker from Front Street challenged: "The United States forces fired upon defenseless and peaceful students without provocation. Shame on such a big and powerful nation attacking a small one that does not have the means to defend itself."

At 11:29 a.m. on January 11th about 200 persons set fire to the Panama Railroad spur track that extends from the pier area to Front Street on the Panama side of the boundary.

Two fires were started in the Panama Canal Company Office and Storage Building at 11th and Front Streets in the Zone at 11:50 a.m. The fire got out of control because sniper fire prevented the entry of Canal Zone firemen. The building was evacuated at 4:15 p.m. and was completely destroyed.

At 2:00 p.m. a mob of about 300 tried to infiltrate through the dock area but was repulsed by troops using tear gas.

During this period rioters completely burned the Canal Zone Sanitation Office.

By 2:45 p.m. on January 11th, three American soldiers had been killed and 12 had been wounded by sniper fire from the Colon side. Because of this fire, for several hours it was impossible to get food to the troops in the Masonic Temple, or to rescue the wounded in the building. Five hundred to 700 rounds of sniper fire had penetrated the Zone during the day. There had been no answering fire from the United States troops. Tear gas was ineffective to rout the snipers. At this time the local commander requested permission to use shotguns for counter-sniper fire. Approval was granted by General O'Meara.

Ball ammunition was never fired into the Republic of Panama by United States troops in the Cristobal area.

The Colon National Guard and Colon firemen made an appeal to the citizens for order at 4:45 p.m. At 5:36 p.m. approximately 500 shouting people congregated at 16th Street and Central Avenue and, at 6:25 p.m., a mob tried to surge across the Army lines to set the piers on fire.

Molotov cocktails were thrown at the Old Cristobal Fire Station at 6:32 p.m. and at 7:06 p.m. Canal Zone police moved 16 prisoners from the Cristobal jail to Gatun for security.

On January 12th, heavy sniper fire and Molotov cocktails were prevalent in the Masonic Temple area. Snipers wounded a Red Cross truck driver as he attempted to evacuate the injured from the Masonic Temple. A group entered the Esso gasoline station across the street from the Cristobal Y.M.C.A. and filled bottles and cans with gasoline. Sniping and fire bomb activity continued until midnight and the crowds dispersed shortly thereafter.

The Colon National Guard took effective control of the Colon side boundary at 5:10 a.m. on Monday, January 13th. Thereafter U.S. troops ceased the use of all riot control weapons. The National Guardsmen immediately conducted a search of all houses on the Colon side of the boundary. No significant incidents were reported on that date.

At 8:00 a.m. on Thursday, January 16th, General O'Meara relinquished control of the Canal Zone to Governor Fleming.

13. Events Affecting the Colon Corridor.

The riots and disturbances on the Atlantic side of the Isthmus twice compelled the United States to establish traffic check points within the Colon (highway) Corridor

(Exs. P-M5, P-M6). Except for one intersection (where it crosses Randolph Road) the Colon Corridor is under the jurisdiction of the Republic of Panama.

The Corridor runs for about four miles between the city of Colon (which is an isolated part of Panama surrounded by Canal Zone territory) and the Canal Zone-Panama border near the town of Cativa. The Corridor varies in width from 100 feet to 200 feet. The highway within the Corridor forms part of the Boyd-Roosevelt Highway, the principal route across the Isthmus and affords Panama a highway connection under its jurisdiction between the city of Colon and the Canal Zone-Panama boundary near Cativa.

During the first two full days of mob violence in Colon, i.e. January 10th and 11th, United States forces defending lives and property in the Canal Zone from the onslaught of the rioters twice established traffic check points within the Colon Corridor in order to prevent the mob from endangering the lives and property of the residents of the Rainbow City housing area.

The Colon Area Check Points

Since early December 1963, vehicular traffic had been precluded from using the Corridor highway near Colon by barricades of barrels and boards which the Panamanian Government erected to facilitate repair of the highway. From the time that Panama erected these barricades until after the January riots, there was no vehicular traffic on the mile and one-half portion of the Corridor near Colon where the U.S. was first required to establish a check point.

Hazard to life and property and the protection and security of the Canal required maintenance of this check point from January 10th at 5:30 a.m. until January 11th at 2:25 p.m. On the night of January 9th, United States

forces found that the check point they had established on the principal United States highway out of Colon to bar rioters from entering the Zone, was being circumvented by many rioters. (See First U.S. Check Point, Ex. P-M5, P-M6.) These Panamanians were walking along the Colon Corridor adjacent to the U.S. check point in Canal Zone territory and then circling behind the roadblock established in December 1963 by Panama.

It became clear that this traffic of rioters in the Corridor was posing a major threat to the safety and security of life and property in the Canal Zone. For that reason the local commander of the U.S. forces contacted the local commander of the Panamanian National Guard and asked that he establish a check point on the Colon border, but the Panamanian commander declined to do so, giving no reason for his refusal. Therefore, to protect the Canal and as a matter of self-defense, U.S. forces controlled pedestrian traffic at this point in the Colon Corridor for the next 32 hours. (See Second U.S. Check Point, Ex. P-M5, P-M6.)

Since the Panamanian-constructed barrel barricade was already effectively halting vehicular traffic, the new check point was utilized to control only the movement of pedestrians. No pedestrians were denied passage through the Corridor at this check point. This check point was discontinued at 2:25 p.m. on January 11th. Shortly after, Panamanian National Guardsmen established a similar one at the same location and performed essentially the same screening function.

On the morning and afternoon of January 11th, a group of Panamanian rioters harassed traffic approximately 100 yards in front of the U.S. check point. This unofficial Panamanian check point denied passage to many vehicles and pedestrians.

While the United States check points were in operation, where there was vehicular traffic, such traffic was stopped

and cars were inspected, but only drivers who had ammunition or weapons were denied passage. Inspectors merely looked into vehicles and examined trunk compartments. Automobile passengers were not searched or required to dismount except when firearms were discovered in the vehicle. No cargo-carrying vehicles or trucks of any description were denied passage at any time. Cars bearing official government license plates of the Republic of Panama were not stopped or inspected. Panamanian emergency vehicles using red lights or sirens were permitted free access without being required to stop.

The Randolph Road Intersection Area Check Point

In the second instance of United States control of traffic within the Corridor, United States forces established a check point in the Colon Corridor commanding the intersection of Randolph Road and the Boyd-Roosevelt Highway. (See Third U.S. Check Point, Ex. P-M5, P-M6.) This traffic control lasted from January 10th at 6:00 a.m. until January 11th at 2:15 a.m.

When circumstances permitted, this check point was moved to points on Randolph Road in Canal Zone territory. (See Fourth U.S. Check Point, Ex. P-M5, P-M6.) Traffic control was again exercised in the same fashion as in the case of the previous check points; with the exception of a group of 15 rioters (one of whom was firing a rifle) who attacked the check point, no pedestrian or vehicular traffic was denied passage through the check point.

National Guard Traffic Control

The National Guard established a traffic check point on the Corridor Road between the Randolph Road intersection and the Republic of Panama border from 1:55 p.m. on January 11th until 4:30 p.m. on the same day. The United States had requested the National Guard to establish this check point by the Coco Solo Hospital, which is in the

Canal Zone, but can be reached by road only via the Corridor. The United States request was prompted by reports that a group of 200 demonstrators was moving toward the hospital. The demonstrators appeared at about 2:00 p.m., but they were told by a National Guard lieutenant there that they could not pass, and they did not go beyond the check point.

Legal Position

The United States actions in the Colon Corridor were authorized by the 1936 General Treaty of Friendship and Cooperation between the United States and Panama. Article X of that Treaty provides that in case of any threat of aggression which would endanger the security of the Panama Canal, the United States and the Republic "will take such measures of prevention and defense as they may consider necessary for the protection of their common interests."

Article X further provides that any measures which either country takes affecting territory under the jurisdiction of the other will be the subject of consultation between the two governments.

A 1939 exchange of notes concerning the 1936 Treaty indicates the understanding of the two governments that "in the event of an emergency so sudden as to make action of a preventive character imperative to safeguard the . . . security of the Panama Canal" the United States need not delay action to meet the emergency pending consultation, although it will make every effort to consult the Government of the Republic after taking the necessary action in question.

As has been noted, the local commander of the National Guard refused the request of the local United States forces commander that the Guard establish a control point within the Corridor to Colon on the morning of January 10th. The United States was, therefore, authorized under Article X to protect the Canal from threats of aggression by the

rioters who were entering the Canal Zone through the Colon Corridor. The same was true in the case of the check point near Randolph Road. Fortunately, prior consultation proved fruitful in the third case of traffic control in the Corridor and U.S. and Panamanian cooperation safeguarded Coco Solo Hospital.

The Pacific Area

On the Pacific side, United States forces faced the same problem of controlling traffic as was faced in the case of the Colon Corridor on the Atlantic side. Both where the highway from Arraijan to Panama City approaches Panama City and on the west side of the Zone where the same highway approaches the town of Arraijan in the Republic, check points had to be established within the Canal Zone to prevent rioters from entering the Canal Zone and endangering the Canal and the lives and property of persons living in the Zone. Unlike the Colon Corridor, Panama does not have any jurisdiction over the territory traversed by the highway or over the highway itself. This territory and the highway are parts of the Canal Zone and subject to the exclusive control and jurisdiction of the United States, just as is the rest of the Zone.

For a period during the riots, five check points existed on the highway between Panama City and Arraijan. Four of these were the temporary check points established by the United States on the highway. The fifth check point is in Arraijan and is permanently maintained and operated by the National Guard, which checks all traffic entering the Canal Zone from that city. The temporary operation of all four check points established by the United States to prevent the entrance of rioters and arms and ammunition, as well as the permanent station maintained by the National Guard, proceeded without incident during the period of the disturbances.

At some times, however, traffic was completely stopped in the area of the Thatcher Ferry Bridge across the Canal because of the dangers to civilians in the nearby housing area and to the security of the bridge, which is completely within the Canal Zone and is under the control of the United States.

Full cooperation existed between the authorities at the temporary United States check points nearest Arraijan and the permanent Panamanian check point in the city. Except for one truck containing a cargo of gasoline and rags, the vehicles escorted by the National Guard through its check point were granted passage through the United States check points.

Just as on the Atlantic side, some Panamanian rioters established rump road blocks on the bridge approach facing the City of Panama within Canal Zone territory. Again as on the Atlantic side, at all times when the rioters themselves did not prevent it, pedestrian traffic was allowed to enter and leave the Canal Zone through the check points after a brief check for firearms. Every effort was made to minimize delays of vehicular traffic. At no time was an emergency vehicle delayed.

Legal Position

Absolute legal authority for these United States actions was granted in the 1903 Convention. Under Article III Panama granted the United States exclusive jurisdiction and control of the Canal Zone. Panama's rights of transit over public roads in the Zone under Article VI of the 1903 Convention are specifically subordinated to U.S. rights under the Convention. Among these is the right to protect the Canal and its auxiliary works.

14. Subsequent Developments.

The incidence of violent acts by lawless groups began to abate by January 13th. At 8:00 a.m. on January 16,

1964, General O'Meara relinquished control of the Canal Zone, and the civil authorities reassumed responsibility for the civil protection of the Canal Zone.

Since the 16th of January, with few exceptions, conditions on the Canal Zone-Panama boundary have been essentially calm. However, several incidents occurred which reflect a continued need for security precautions. One occasion, on January 27, 1964, involved an unsuccessful attempt by a single individual to set fire to the Tivoli Guest House. On the evening of January 28, 1964, several heavy concrete slabs were placed on the tracks of the Panama Railroad in an isolated area in an unsuccessful attempt to derail a freight train. In addition, there have been numerous incidents of stoning on 4th of July Avenue and the east approach to the Thatcher Ferry Bridge by small groups of Panamanians.

PART II—CIVIL SECURITY FORCES—CANAL ZONE AND PANAMANIAN

1. *The Canal Zone Police Force.*

At the time the disturbances began on January 9th, the authorized strength of the Canal Zone police force totaled 185 men.

The mission of the Canal Zone police force is to carry out the functions of civil law enforcement within the Canal Zone with the added function of maintaining and operating the Canal Zone Penitentiary and a number of jails. Under normal conditions the size of the force is maintained at such a low number because of the peaceful nature of Canal Zone residents and of personnel who are employed within the Canal Zone. It has never been contemplated that the Canal Zone police force would be capable of repelling a major hostile incursion from the Republic of Panama or of controlling massive, sustained rioting in the Canal Zone by Panamanian residents. During the entire history of the Canal, the Canal Zone police

force has had a close, cordial, and effective relationship with the Panamanian National Guard and has relied on that organization to maintain peace and order along the Panamanian side of the border.

2. The Panamanian National Guard.

The Panamanian National Guard is the only security force of the Panamanian Government. Under the Panamanian constitution, the President of Panama is Commander-in-Chief of the Guard. As of January 9, 1964, the Panamanian National Guard numbered about 3,000 of whom about 148 officers and 1,600 enlisted personnel were stationed in Panama City and vicinity. In Colon, there were about 18 officers and 241 enlisted men.

The National Guard is known to have a good capability for controlling riots or civil disturbances, particularly in the units stationed in or near Panama City. Since May of 1963 more than 190 guardsmen stationed in Panama City have received extensive riot-control training under instructions furnished by the Inter-American Police Academy at Fort Davis, Canal Zone. Considerable riot control equipment including tear gas bombs was made available to the National Guard during the past year and it received a substantial number of vehicles from the United States.

The Panamanian National Guard was in a full state of readiness on the 9th of January. For some time prior to that date the Guardia personnel not on duty had been generally confined to their barracks, maintained at control points, so that they would be available for instant call in the event an emergency developed. The Panamanian Government had taken that action in view of the general tension existing in an election year and in view of the recognized possibility of disturbances arising from the threats of a transportation strike and/or a general strike in the city of Panama resulting from the extended chauffeurs' strike that existed in the Canal Zone.

PART III—ROLE OF PANAMANIAN PRESS, RADIO, TELEVISION, AND PUBLIC OFFICIALS IN INCITING VIOLENCE

1. *Introduction.* Panama's radio, television, and press overwhelmed the people of Panama with a highly emotional and one-sided story of the rioting and violence of January 9th and the following days. With no other sources of information, the Panamanian public appeared to accept the accuracy of these reports without question.

There can be no doubt but that the inflammatory tone and the one-sided, incomplete, often confused, and frequently false information that was poured out by these media contributed significantly to losses of life and property suffered during those tragic days.

The public statements of officials and other prominent citizens of the Republic were additional factors in the situation.

Possibly as damaging to public order and the nation's welfare was the approval by all the information media and many of the public figures of the riotous and destructive actions of the students and adults who made up the mobs. The rioters who stoned, overturned, and burned automobiles, beat innocent passers-by, looted and burned U.S. and Panamanian buildings, killed and wounded Americans, shot at their own people, and committed other crimes were characterized without distinction as heroes and patriots, and, if killed, whether by gunfire, cremation while looting, or other accident, as martyrs. There is little wonder that the Panamanian public, especially the youth, eagerly rushed into the streets to commit acts of violence seemingly condoned by the Panamanian radio, television, press, and notables.

This attitude was endorsed and encouraged by the news media in still another way. At least during the first hours of the disturbances, they informed the rioters that there

was no need to fear interference from the National Guard. In fact, several of the radio commentators indicated that the rioters might actually expect support and assistance from the National Guard.

Further, some of the radio stations issued announcements pinpointing the next likely location of intensified mob violence. This attracted large numbers of people to the scene to participate in the rioting.

Dozens of emotional-packed words and phrases were broadcast by the various Panama radio stations during the first twenty-four hours: "Insolently training their guns on Panamanians . . . brutal action . . . aggression displayed against the defenseless Panamanians . . . our students are dying every minute . . . invading army . . . savagery . . . vile aggression . . . massacres and assassinations defenseless people . . . sinister spectacle of their hatred . . . assassinated youths . . . ravage our people." (See Exhibit B)

Radio Tribuna asserted that "Youths of the Zone attacked the Panamanian youths and later destroyed our flag," and that "the Canal Zone policemen stood by without intervening." This falsehood, broadcast at 8:30 p.m. (Ex. B, p. 8) at the height of the mob violence along the Canal Zone/Panama City border, was the sort of propaganda most likely to enrage the Panamanian people, who are highly sensitive to indignities toward their nation.

Commentators erroneously described the U.S. Army's tracked, armored personnel carriers, as "tanks", and this error undoubtedly gave thousands of listeners a completely distorted picture of the Army's response to the mob violence. No tanks were used at any time during the rioting.

The frequent mention of U.S. Army machine guns, and of machine gun fire directed at the Panamanians, also was completely incorrect. This fact was underlined by General

Andrew P. O'Meara, Commander in Chief, United States Southern Command, who affirmed that belted ammunition, essential to the machine guns, had not been issued.

2. Press.

All the Panamanian newspapers published biased, erroneous, and inflammatory accounts of the flag incident and the ensuing disturbances (See Exhibit C).

For example, the red and black-lettered front page headline in the January 9th issue of *Critica* read: "ZONE STUDENTS SAY 'THE PANAMA FLAG NO!'" *Critica's* report stated that the Zone authorities had decided to cut down the flagpole in front of Balboa High School because the Canal Zone students had defied the order given by Canal Zone Governor Fleming that the Panamanian flag be raised at that school. Cutlines under a photograph of the United States flag flying in front of Balboa High School said the flagmast was ordered cut down by the Canal Zone Governor "in view of the negative action of the students who didn't want Panama's national emblem raised beside the United States emblem." (Ex. C, p. 15)

The Panama Canal Information Officer informed the editor of *Critica* that the Balboa High School students were not protesting against flying the Panamanian flag but only against the removal of the United States flag. Nevertheless *Critica* never corrected its erroneous report.

El Dia on January 13th headlined reports of "North American barbarians who massacred, of savage soliders who shot into Panamanion masses."

Editor and columnist Guillermo Rodolfo Valdes wrote that Panama Assemblyman Harmodio Arias, Jr., an owner and director of the Arias publishing chain of four newspapers, told 50 Panamanian newsmen on January 11th that "We should lynch the savage Zonians." (Ex. C. p. 37)

El Panama American reports of the January 9th and subsequent incidents were characterized by such expressions as "the blood of Panamanian youth flows in the Canal Zone streets in new patriotic manifestations," and "Panamanian sovereignty and liberty should be defended to the last drop of blood, even to life itself."

Like the other newspapers, the usually more reliable *La Estrella de Panama* made no effort to check facts and published a lurid report on January 10th that "the troops had heavy tanks with cannon and some lighter tanks with lighter guns." On page 10, under a headline "MASSACRE IN 5TH OF MAY PLAZA," the erroneous statement was made that "the North American troops invaded our streets around 5th of May Plaza and the Legislative Palace, opening intensive fire with their modern arms and machine guns."

Another *La Estrella de Panama* report attempted to justify the burning of buildings of United States firms in Panama as vengeance against a massacre.

La Estrella on January 13th spoke of the "murders occurring in the streets and central plazas of the capital city into which the North American war tanks chased our students and people, patriotically excited by the barbaric aggression."

3. Radio Stations.

Radio broadcasting in Panama during the period of the riots was inflammatory.

At 7:55 p.m., Thursday, January 9th, Onda Popular announced "A total of 400 University students are retaliating for action of the Balboa High School demonstrators who stepped on and tore apart a Panamanian flag earlier this evening. The Panamanian students are now burning an American flag. They have joined a demonstration of 15,000

people in Panama City, in protest against Canal Zone treatment of the national emblem." (Ex. B, p. 6)

The mob that attacked the Ancon Laundry, railroad station, and freight house and almost overran the Ancon housing area, all within the Canal Zone, was described by Onda Popular at the height of the riotings as "Panamanian adults and students who converged here to protest the trampling of the Panamanian flag." A moment later the same station broadcast: "The building of the Pan American Airways, opposite the Legislative Palace, has all its windows shattered, and the huge neon sign was destroyed by Panamanians who were angered by the police of the Zone who fired mercilessly against the peaceful Panamanians who tried to take the flag to the Zone." Shortly afterward these individuals succeeded in burning the building.

At 9:30 p.m. Radio Tribuna broadcast: "... The people continue massing in anger ... One valiant youth with a Molotov bomb hurled it at a tank, but it fell short. The Panamanians are bravely facing the superiority of the North American weapons. Another youth just fell injured ... " (Ex. B, p. 12)

At 10:35 p.m. Radio Tribuna reported, "Scores of persons are now armed with bottles filled with gasoline, Molotov bombs, and are throwing them at the U.S. Army tanks, although they fall short. But some more daring youth are running toward the tanks." (Ex. B, p. 16) Ten minutes later the same station broadcast, "... A National Guard official has just reported that six persons have now died from bullets fired by the Canal Zone police and U.S. Army. The Panamanians now have been fighting against the Zone for five hours with breast bared to the fire of the machine guns, tear gas, and power of the U.S. Army in the Zone." (Ex. B, p. 16) At 10:55 p.m., "Here on the border with the Canal Zone a kind of truce, a lull, has set in although some patriotic youths continue to hurl Molotov bombs sporadically."

cally." (Ex. B, p. 17) At 11:20 p.m., "From our position on the corner of the 'Good Neighbor' bar we were able to observe a suicide attack by students with Molotov bombs against the armored cars of the U.S. Army. After throwing the bombs, the students retreated." (Ex. B, p. 19)

Panamanian National Assembly Deputy Thelma King, the owner of Tribuna, declared over that station at 2:20 a.m., January 10th: "The Panamanian people wrote today the most beautiful page in our history, because they showed the North Americans that before the force of the bullets, the force of reason will triumph, and tomorrow or the day after, only one flag will fly in the Canal Zone. It will be the Panamanian flag." (Ex. B, p. 27)

An editorial from the newspaper *El Dia* read over Radio Musical at 5:40 a.m. included, "... North America has played its last card against Panama. Last night's incidents reaffirm our definite sovereignty from border to border. The martyrs of the flag have not died in vain." (Ex. B, p. 32)

On January 10th at 12:30 a.m., Radio Tribuna broadcast, "Panamanian people, we cannot permit this. Hundreds of youths are approaching us demanding arms to defend themselves. We here in Radio Tribuna are asking them to remain stable, to maintain peace." But this was followed immediately by, "But it is a crime to attack people with machine gun fire. At these very moments, they fired against the crowds with machine guns for about five minutes. This fills us with indignation. The people of Panama are asking the National Guard to come and fight with the support of the Panamanians against the Canal Zone troops." (Ex. B, p. 21)

Radio Tribuna reported at 12:50 a.m. that 10,000 people bearing a huge flag were advancing toward the Legislative Palace at the Canal Zone-Panama boundary and defying the bullets of the U.S. Army. Then the announcer added,

"We believe calm should be maintained, otherwise the useless bloodshed will continue." (Ex. B, p. 24)

By about noon on January 10th, all of the nation's radio stations were brought into a single national network (Gran Cadena Nacional—Grand National Network) with microphones in the Presidencia (Ex. B, pp. 57-60). All broadcasting was supervised by President Chiari's press secretary. It was not until January 13th that all stations resumed individual broadcast schedules.

Reporting Inaction of the Panamanian Authorities

Panama's radio announcers not only by word and implication gave the rioters the nation's blessing in their depredations, but, in addition, they repeatedly provided assurance that the Panamanian authorities would not interfere through the use of the National Guard.

At 7:30 p.m., Radio Aeropuerto revealed, "... The National Guard has remained aloof from all the incidents." (Ex. B, p. 6)

One hour later as the violence reached its highest pitch along the length of Kennedy Avenue, Radio Tribuna announced, "... The National Guard reportedly is siding with the Panamanians to defend our sovereignty." (Ex. B, p. 8) The same station stated at 9:10 p.m., "The National Guard is helping the Panamanians." (Ex. B, p. 11)

At 12:35 a.m., Radio Tribuna reported on the situation inside Panama City at the area where mobs destroyed the offices of the United States Information Service: "... Now a National Guard cavalry squad is approaching ... Apparently the Guard is cooperating with the Panamanians in their fight with the Zone." (Ex. B, p. 22)

At 12:51 a.m., January 10th, Tribuna announced: "Last minute news is that a group of National Guard members with rifles and guns are in front of the 'Relax' bar. They

have orders that, if the U.S. troops which are on the other side of the 4th of July Avenue in front of the Pan American Building open fire again against the Panamanian people, to join the Panamanian people and open fire against the U.S. Army. We have not confirmed this." (Ex. B, p. 24)

4. *Television.*

Television stations in Panama also kept the Panamanian people aroused. Reference to members of the mob as heroes and to the dead as martyrs implied a government and national approval of the acts of the students and of the mobs. The entire series of events was reported as a patriotic demonstration.

Deliberate attacks on individuals, burning of cars and other property, tearing down of fences along the Panama—Canal Zone boundary, and destruction of street lights and traffic standards were explained as manifestations of indignation against the acts of the United States citizens. The indication given listeners was that the actions were justified and patriotic. The U.S. troops were pictured as vicious, and as oppressing the "defenseless" Panamanian public, despite the fact that the mobs were armed with stones, pipes, bottles, sticks, and Molotov cocktails, and in some instances with firearms. Later, pictures were telecast of dead bodies, together with statements placing responsibility on the United States for the deaths.

5. *Public Officials.*

Panama President Roberto F. Chiari, in a talk to the nation at 12:40 a.m., January 10th, gave his solemn promise "that the blood of the martyrs who perished today will not have been shed in vain." (Ex. B, p. 23) In an address later in the day he appealed to the citizens to keep calm "and to pay no heed to demagoguery, which might be used by elements who in reality are seeking another damaging end for all Panamanians." (Ex. B, p. 51) It was

reported in *El Dia* that Panama National Assemblyman Harmodio Arias, Jr. stated in an address before Panama newsmen on Saturday, January 11th, "We should lynch the savage Zonians." (Ex. C, p. 37)

"Panamanian people cannot continue to be massacred," said National Assemblywoman Thelma King in a 2:20 a.m. broadcast on January 10th. "Tomorrow or the day after," she said, "only one flag will fly in the Canal Zone. It will be the Panamanian flag." (Ex. B, p. 27)

Panama's Foreign Minister Galileo Solis told University of Panama students at a mass meeting January 10th: "In this tragic hour, when defenseless Panamanians have been the object of vile military aggression by troops of the most powerful nation on earth come to show their valor, courage, and thirst for blood which they have not been known to show in other parts of the world where they are frequently challenged but do not respond."

Miguel Moreno, Jr., former Foreign Minister of Panama, wrote to President Chiari concerning the flag incident and its aftermath. His letter, which was carried by the Panamanian press on January 15th spoke of "the inhuman and unjustifiable aggression of the U.S. Armed Forces against peaceful and defenseless Panamanian citizens."

6. Conclusion.

By general abandonment of objective reporting and substitution of deliberate incitement to violence and resort to statements calculated to influence the emotions of the entire populace, the, Panama radio, television, and press undoubtedly greatly intensified and prolonged the rioting and violence during the period January 9th through 12th. Similarly, speeches and public statements made by high-ranking officials of the Panamanian Government contributed significantly to the creation and maintenance of an atmosphere of excitement and indignation conducive to violence against United States citizens and the Canal Zone.

PART IV—EXTREME LEFTIST ELEMENTS

It is significant that the rioting occurred so quickly, was so widespread and violent, and continued for such a prolonged period of time. Neither the long-held views of many Panamanians nor the flag incident itself seems wholly adequate justification for what took place. The United States knows that these are matters of great concern to the Commission and herewith offers some evidence it has bearing on these questions.

The United States' presentation to this point has given two, of what may well be a number of reasons, for the sudden rioting and the prolonged mob and sniper attacks on U.S. personnel and property in the Zone: the distorted, vicious radio broadcasts encouraging violence by Panamanians, and the lack of timely and effective action by Panamanian authorities. There is strong evidence that there is also a third reason—the activities of well-trained Communist agitators.

The OAS Peace Commission arrived on Saturday, January 11th, during the rioting. Representatives of the United States Government informed the Panamanian Government representatives that day, in the presence of the Commission, that we had information that 10 of the most persistent agitators seen urging the crowds to invade the Zone, especially on Saturday, January 11th, were Communist, some of them trained in Cuba, the Soviet Union, and Red China. The Panamanian Government in the Peace Commission asked that evening for the names of those persons so that it could take action to place them in confinement. The United States Government representatives gave the designated Panamanian authorities the names of these 10 individuals on the evening of January 11th. Despite this, on the following morning, Sunday, January 12th, six of these 10 trained Communist agitators were seen leading the funeral procession through Panama City.

It is important to identify a few of these agitators.

Floyd Britton is a Communist Youth leader who was trained in Cuba for several months in late 1961 and early 1962. He is a member of the Communist Party of Panama, has been in other Iron Curtain countries and participated actively in the Cerro Tute uprising in April 1959 and in the student riots of 1958 and 1959. On January 9th he was active in destroying the Canal Zone Bus Terminal and agitating mobs to violence. Throughout the remainder of the rioting he was active on the Pacific side in inciting mobs to violence.

Cesar Carrasquilla is a Communist student leader and a member of the Castro-controlled Vanguard of National Action. He was at the National Institute on January 10th inciting students to violence and was also agitating throughout the subsequent days of rioting on the Pacific side. On February 6th he departed for the Soviet Union and is probably still there at this time.

Huberto Bruggiati, a member of the Communist Party of Panama, who has been trained in Cuba and other Iron Curtain countries, and who participated in the Cerro Tute uprising in April 1959 and in the student rioting of 1958 and 1959, was seen agitating and inciting others to violence on the Pacific side.

Alberto Calvo, a member of the Communist Party of Panama and student leader at the University of Panama, was also seen inciting students and others to acts of violence during the rioting.

Virginia Ramirez, Communist Party member, who participated actively in the 1958-1959 riots in Panama, was also seen during the rioting inciting students and others to acts of violence on the Pacific side.

These are but a few examples of extreme leftists who incited and agitated throughout the weekend to keep violence and rioting against United States citizens in the Zone at a fever pitch as long as possible. This extremism should.

not be confused with the sincere patriotic nationalism of most Panamanians. There is no intention to comment on or to dispare the feelings of many Panamanians about the Canal issue. It must be recognized, however, that extreme leftist opportunists, trained and helped by Cuba and other communist countries, for their own purposes and for the purposes of the causes they serve, attempted with considerable success to divert the legitimate aspirations of many Panamanians into an outburst of prolonged violence, terror, and plunder with many tragic and irreversible consequences. Looking to the future, their purposes and activities justify continued concern by all interested in Hemispheric peace and solidarity.

PART V—DEATHS, PERSONAL INJURIES AND PROPERTY DAMAGE IN THE CANAL ZONE

The extensive rioting by residents of the Republic of Panama that commenced on January 9, 1964 resulted in five known deaths in the Canal Zone. The violence also caused personal injury to 201 civilians and military personnel who sought treatment in the Canal Zone. In addition there was widespread damage to United States Government facilities and to private property. The casualties and damages are separately described below.

1. *Deaths and Personal Injury.*

During the rioting snipers were active on both sides of the Isthmus, firing from Colon and Panama City, Republic of Panama, into the Canal Zone. At the Atlantic end of the Canal Zone three U.S. Army enlisted men were killed and 15 U.S. military personnel and three civilians were wounded in the Canal Zone by sniper fire. At the Pacific end of the Canal Zone nine U.S. military personnel and three civilians were wounded in the Canal Zone by sniper fire. In addition to the deaths and injuries from sniper fire, a civilian was hit and killed on the roadway of the

east approach to the Thatcher Ferry Bridge by an automobile whose driver was escaping from the violent actions of the mob and a U.S. Army soldier was fatally injured in an accident while on patrol duty in the Canal Zone.

Others were treated in the Canal Zone for injuries caused by rocks, Molotov cocktails and other missiles thrown by the rioting mobs and by deliberate beatings at the hands of the mob.

At the Atlantic terminus of the Canal, 51 U.S. military personnel and 29 civilians were treated for injuries from these causes. On the Pacific side 14 military personnel, one Peruvian naval cadet and 32 civilians were treated for injuries received in this manner. One of the civilians stoned by a mob at Panama city while entering the Canal Zone has lost the sight of an eye as a result of the injury.

The United States Government is not in a position to analyze the conflicting reports concerning Panamanian casualties to determine how many of them were caused by U.S. action. It is certain that a number of Panamanians suffocated in the burning of the Pan American Building, a fire caused by the Panamanians. The United States Government also has several affidavits by U.S. military officers who observed Panamanians shooting at Panamanians. This is a serious charge which requires investigation by means not available to the United States Government.

2. Property Damage.

The rioting mobs crossed the border and invaded the Canal Zone on numerous occasions. These invasions resulted in heavy damage to Panama Canal Company and Canal Zone Government facilities, buildings and other property. The estimated replacement or repair cost for the Panama Canal Company-Canal Zone Government damaged facilities is in excess of \$1,508,000.

On the Pacific side of the Isthmus the following Panama Canal Company-Canal Zone Government facilities were damaged by the mob action.

Ancon Railroad Station ransacked with office equipment and supplies scattered and destroyed. Freight shipments in the Station looted and burned.

Railroad coaches at Ancon Station damaged by fire.

Ancon Freight House damaged by fire started with Molotov cocktails.

Ancon Laundry damaged by fire.

Shaler Bus Terminal looted and damaged by fire.

Tivoli Guest House damaged by fire started with Molotov cocktails and by sniper fire.

Street lights and traffic signals damaged and destroyed. The fire damage listed above would have been much more extensive but for fire equipment on the scene which immediately extinguished the fires.

On the Atlantic side of the Isthmus the following Panama Canal Company-Canal Zone Government facilities were destroyed or damaged by the mob action (Ex. P-31, P-32).

Panama Canal Office and Storage Building, Cristobal, containing the Cristobal Railroad Station and other Railroad Division offices, Central Employment Office, Navy Oceanographic Office, Cristobal District License Examiner's Office, Public Health Nurse's Office, Red Cross Office, and a Panama Canal warehouse area, gutted by fire with all supplies and equipment destroyed.

Many railroad ties on the main line and adjacent sidings destroyed by fire.

Sanitation Office destroyed by fire.

Street lights, traffic and railroad signals destroyed.

The private property in the Canal Zone damaged in the riots included the Cristobal Y.M.C.A. which was totally destroyed by fire at a loss of \$342,000 (Exs. P-33, P-34). The Masonic Temple in Cristobal and other lodges, churches and steamship agencies in the Canal Zone were damaged by mob action, fire and looting at a loss of \$102,000. The American Red Cross in Cristobal suffered losses of \$1,500 by fire and 30 tons of CARE food supplies valued at \$10,000 were also burned. Reports received by the Panama Canal Company to date cover the total destruction of 17 private autos and damage to 60 others at a loss in excess of \$28,000. In addition, other private property and personal effects of residents and concessionaires in the Cristobal Y.M.C.A. and Masonic Temple values at \$27,000 were damaged or lost due to fire, looting and vandalism.

A substantial amount of United States Government property used by the Inter-American Geodetic Survey (IAGS) was also destroyed when the Pan American Building was burned and looted (Exs. P-27, P-28). In addition, 180 United States military personnel reported loss of all or part of their household goods and possessions as a result of the rioting and looting. The value of these goods was over \$72,000. More than 100 automobiles belonging to the United States military personnel were also destroyed or damaged.

PART VI—VIOLENCE IN PANAMA CITY, COLON, AND THE INTERIOR

Damage to property of United States citizens and threats to their lives were not limited to the areas along the border between the Canal Zone and the Republic of Panama.

In Panama City rioters broke 78 windows at the United States Embassy and more at the Bi-National Center, burned the Pan American Building (owned by Panamanians), burned the Goodyear Tire Company to the ground, and looted and burned the United States Information Service

building. At Colon they vandalized the United States Consulate.

At David they ransacked and burned the Donald Dickson Company, the Chase Manhattan Bank, the USIS Mobile Unit and the USIS building.

At Puerto Armuelles there was an estimated mob of 2,000. It was necessary for the Chiriqui Land Company to evacuate to Costa Rica all its United States employees and their dependents.

At Santiago an angry mob searched the hotel for the Peace Corps doctor who had taken refuge in a shower in the manager's apartment. Friendly Panamanians took him out of town in disguise.

A gang attacked the house of an American AID advisor at Chitre who was protected by 10 men sent by the National Guard. At Penonome there was a general demonstration against the United States.

From January 9th to 13th Panamanian mobs in the Rio Hato Military Reservation tore screens from scores of buildings, mixed water with gasoline supplies, dismantled wooden siding on two buildings and gutted the Club House at the entrance of the Reservation. Later the National Guard assigned 23 men to guard United States property on the Reservation.

These numerous widely scattered acts of violence testify to the power of broadcasts emanating from Panama City to inflame Panamanians throughout the country.

Exhibit B

FACT SHEET

[Prepared by Alfred B. Fitt, General Counsel,
United States Department of the Army]

SUBJECT: Riots in Cristobal-Colon, Canal Zone

The rioting in the Cristobal-Colon area began on the night of January 9, 1964, a few hours after rioting had already begun on the Pacific side of the isthmus. The events as they occurred in the area of the Masonic Temple and the YMCA area were described in the United States presentation before the Committee established under the resolution of the OAS:

"The first indications of trouble in the Cristobal-Colon area . . . were noted at 8:00 p.m. At that time about a dozen singing, shouting persons, carrying a Panamanian flag, were observed as they marched on Bolivar Street past the front of the Cristobal Armed Services Y.M.C.A."

By 9:14 p.m., a mob of 1,500 persons had formed. The mob entered the Canal Zone, proceeded to the Panama Canal Administration Building, and raised a Panamanian flag. At this time, the mob was described as "not violent," but nevertheless "unruly and clearly affected by the action of agitators." At 9:30 p.m., the mob left the area of the Administration Building, and in a "disorderly manner," headed along 11th Street and past the Masonic Temple.

"A group of teenage girls leaving the Masonic Temple after a meeting nearly became enveloped by the mob as it moved past on its return to Colon. A retired U.S. Army Sergeant, residing at the nearby Y.M.C.A., stood by with a shotgun he owned to protect the girls. Without having fired it, he turned his shotgun over to Canal Zone police later that night. Soon after the

girls left, a barrage of rocks and other missiles was thrown at the Masonic Temple."

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"By 9:45 p.m., a crowd of about 400 persons had gathered at the intersection of 11th Street and Bolivar Avenue in Colon. Held there in check briefly by the National Guard, the demonstrators pressed on down 11th Street to Balboa Avenue. At almost 10:15 p.m., after again being briefly checked by the National Guard, a contingent of the mob surged up Balboa Avenue to a point near the Y.M.C.A. While police officers attempted to calm the forward contingent of the mob, windows could be heard being broken in Panama Canal offices adjacent to the main body of the crowd. The destruction by elements of the mob became more extensive. Windows and doors in the Panama Canal Company Office and Storage Building were broken; furniture was dragged out into the street; and pieces of office equipment were destroyed or stolen. . . . Besides the damage to the Panama Canal Company Office and Storage Building, extensive damage was incurred in the Masonic Temple and the Y.M.C.A."

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"While police were preoccupied on Balboa Avenue, other rioters entered the Cristobal Y.M.C.A. on Bolivar Avenue, looted the gift shop, destroyed furniture, and overturned file cabinets."

The commanding officer of the 4th Battalion, 10th Infantry had been alerted at 8:50 p.m., but was not given the order to move until 9:50 p.m. The order which he received from higher headquarters directed him to move to the Cristobal area, and assigned him the mission to "clear the Canal Zone of rioters, and to seal the boundary between the Republic of Panama and the Canal Zone."

At about 10:15, the battalion, consisting of about 700 men, arrived in the area of Pier 9 in Cristobal. The battalion commander went forward toward the Zone boundary to reconnoiter the situation. As described above, the rioting had already reached a frenzied pitch. In his testimony before the International Commission of Jurists, the Commander described the situation as he arrived on the scene:

"I first went to the intersection of Front Street and 11th Street; I circled back to Terminal Street, and I noticed that there was approximately 300 rioters scattered throughout the area from the intersection of Front Street and 11th, by the Commissary Building, around the Masonic Building and to the rear of the Y.M.C.A.

"I returned quickly to Pier 9, picked up Company 'A', returned to the intersection of 11th and Front Street. I had the troops to dismount, put on their gas masks, put the bayonets on their weapons, and formed into a riot control formation. The order to the Commander was to move down the right side of 11th Street, to drop personnel off sealing the border as they went.

"At this point, my executive Officer arrived on the scene. I requested that he stay with Company 'A'. I told him I would return and get Company 'B', and commit Company 'B' up Terminal Street to clear the area between 13th and 14th Street and to seal the border.

"After committing Company 'B', I returned back to Company 'A' to see what action was taking place."

Complying with the battalion commander's order, Company A had moved in column formation down 11th Street, staying within the Zone, dropping off men as they went to form a cordon sealing off the border. The Company turned

right onto Balboa Avenue, and went into the echelon formation frequently used for riot control purposes. The echelon was to the left, so that rioters forced to withdraw before the troops would be urged to retreat through alleys between the Masonic Temple and YMCA, and thence back across the Zone Boundary on Bolivar Avenue and into the Republic.

After a scuffle with the rioters, the troops continued along Balboa Avenue until they reached 13th Street. Groups of men were left at intersections to move up to the boundary along Bolivar Avenue. When the main body of Company A reached 13th Street, it faced about, retraced the route up Balboa Avenue, turned right onto 11th Street, and began to advance toward the intersection of 11th and Bolivar.

At this point, about 15 Panamanians, who had been ransacking the Masonic Temple, began jumping from the windows on the first and second floors onto the troops passing by below on 11th Street. These rioters were promptly ejected from the Zone by the troops, who then linked up with the other troops of the company who had been detached from the main body of the company, and who had made their way up 12th and 13th Streets to Bolivar Avenue. The salient formed by the Zone boundary along 11th Street and Bolivar Avenue was now sealed, and the mob cleared from the Canal Zone area within the salient. This area included the Masonic Temple and the YMCA.

The troops were now confronted with a mob estimated by the company commander to be approximately 3,000. This mob began to assault the troops with a shower of rocks, bricks, plate glass, and Molotov cocktails. Two soldiers of Company A were wounded by bullets. Others were seriously injured by the flying debris and Molotov cocktails. Once, the rioters attempted to push an automobile through the cordon of troops, but the vehicle collided with other rioters.

During these initial hours when the Infantry remained in position on the line, only tear gas grenades were used to contain the mob and discourage their attacks.

Before midnight of the 9th, Company A had sustained many injuries. The battalion commander therefore relieved Company A, pulled it back well to the rear, and replaced it with Company C. Soon after Company C took up positions, one man in the company was shot and killed and at least two others wounded by sniper fire. In order to protect the troops from the sniper fire, around midnight the commanding officer of Company C moved the company back into the Masonic Temple, the YMCA, and the Commissary Building. Company B, whose commander had been wounded and first sergeant killed by sniper fire, also fell back from the Zone boundary, and took up positions along the railroad tracks. By morning of the 10th, a third soldier had been killed by snipers, and a total of nine wounded. The troops had not yet returned fire on the snipers.

With the coming of daylight on the 10th, the rioters increased their efforts to burn the buildings on the Zone side of the boundary. Before the ICJ, the battalion commander testified.

"During the morning hours of the 10th, after from around 6:00 a.m. to 12:00 Noon, we received heavy Molotov cocktails in the vicinity of the Masonic Building, the YMCA Building and the Commissary Building."

The events of Friday the 10th are described in the OAS presentation:

"At 10:00 a.m. an attack of Molotov cocktails was launched against the Cristobal Y.M.C.A., setting the building on fire. Sniper fire hindered Canal Zone firefighters who attempted to control the blaze. Com-

pany C, which had taken up positions in the Y.M.C.A. was forced by the fire to evacuate the building shortly after 2:00 p.m., and the second platoon took up sang-bag positions in the parking lot behind the Y.M.C.A.

"The rioters then shifted their attack to the Masonic Temple, again employing Molotov cocktails. The Company was forced to move the command post from the Masonic Temple that afternoon but was able to maintain an observation post on the top floor of the structure.

"The Y.M.C.A. continued to be a target for Molotov cocktails during the day. Sniper activities continued at 12th Street and Bolivar Avenue. The barrage of rocks from across Bolivar Avenue at 11th Street in Colon resumed at 11:38 a.m. During this disturbance, a group of people ran a car up on the sidewalk at 11th Street and Balboa Avenue and set it on fire.

"A group of about 200 people in the area of 11th Street and the railroad tracks was forced back into Colon by the use of tear gas.

"The soldiers who remained in the observation post on the top floor of the Masonic Temple continued to receive heavy sniper fire for two and one-half hours in the evening of Friday, January 10th. That evening at the building of the Cristobal Credit Union, troops of Company B were faced with a group of about 50 people attempting to set fire to the building. The mob was dispersed with the use of tear gas while Canal Zone firemen extinguished the fire."

In addition to the attacks with rocks and Molotov cocktails, heavy sniper fire continued throughout the 10th and into the 11th, when two soldiers on the top floor of the Masonic Building were wounded. Finally, in the early afternoon of the 11th, the battalion commander reported

to Army headquarters that his unit had sustained an alarming number of casualties (3 dead, 15 wounded). Headquarters therefore granted permission to return fire on snipers using shotguns only. Selected marksmen were then authorized to fire on known snipers.

The harassment from stones and Molotov cocktails continued. On the morning of the 12th Panamanians throwing Molotov cocktails from the Olimpia Bar succeeded in setting fire to the second story of the Masonic Temple. Since the battalion commander had been authorized to return fire on snipers only, he did not fire on the people throwing Molotov cocktails.

In the early morning hours of the 13th, the Guardia Nacional took official control of the Colon side of the boundary, searching all houses along their side of the boundary. Hostile action in the area thereafter ceased.

The foregoing sequence of events presents a picture of the riots in two phases: the first phase began with the initial outbreak of violence about 9:30 p.m. on the 9th as the crowd left the flag-raising demonstration at the Administration Building, and demonstrators began to commit acts of vandalism along 11th Street and Balboa and Bolivar Avenues. The second phase began with the arrival of the troops between 10:15 and 10:40 p.m., when the mob violence grew until it became a pitched battle between the rioting mob backed up by concealed snipers, on one side, and the U.S. Army troops on the other.

The Chief of the Canal Zone Police in the Cristobal District in his testimony before the ICJ, stated that, about 10:10 p.m. (shortly before the troops arrived), a crowd had built up along 11th Street by Bolivar and Balboa Avenues (the location of the Masonic Temple), and had entered the Zone. He testified that "... immediately we began hearing the sounds of glass breaking ...". He went on to describe the initial appearance of the troops and their confrontation with the mob, while he and the police-

men with him went to investigate "sounds of destruction going on inside of the YMCA." He then described the scene as he entered the YMCA:

"When we entered the YMCA it was a scene of utter destruction. All of the light fixtures—the globes were broken. The furniture was broken and strewn about the floor. The water fountain had been torn from the wall and was laying on the floor and the water was flowing out all over. A steel grille gate which surrounded the merchandise section was crushed to the floor and there was a large group estimated up to 100 people running all about the place breaking things and some were carrying merchandise out the front door."

At the instant described above, the troops had not entered the YMCA, but had just arrived in the area and were occupied with the demonstrators in the street and the immediate task of clearing them out of the Zone.

The facts as they are related above may be ascertained from a reading of the United States presentation before the OAS, as well as the testimony before the International Commission of Jurists and the Report issued by that committee. A thorough examination on the sworn statements given by Army personnel who were involved in the incidents in the Cristóbal-Colón area reveals that these statements fully corroborate the public record. For example, as to the condition of the YMCA when the troops arrived, a Company C private stated, "The 2nd platoon . . . moved inside the YMCA. There wasn't anybody in the YMCA. The lights and furniture were destroyed."

In another affidavit, the commanding officer of the first company to be deployed describes how the battalion commander, having made an initial reconnaissance on arrival in Cristóbal, gave him his instructions to clear the Canal Zone of all rioters, and informed him that ". . . rioters had entered the Canal Zone at 11th Street and were looting the YMCA (and) the Masonic Temple . . .". The

same officer, in his affidavit, also recounts the incident wherein, as his unit passed the Masonic Temple, Panamanians armed with pipes and chair legs began jumping onto his men from the first two floors. He also states that "... the windows in the Masonic Temple had been broken from the inside ...". (emphasis added) It is evident from this other affidavit that as of the time the first troops appeared in the area of the YMCA and Masonic Temple, rioters had already entered both buildings and inflicted considerable damage to property therein.

After the troops had occupied the buildings in the YMCA-Masonic Temple vicinity under instructions to protect the property, their actions, according to all statements taken, were consistent with instructions. A captain, in his affidavit, states that he was given a message by the battalion commander to convey to the officer who had been placed in charge of the Masonic Temple. The order was, in the captain's words, "... that if the rioters attempted to enter the building with the intent to do damage to persons or property that appropriate action ... could be used ...". According to the captain, the order went on to state, "... Those people on the 1st floor could assume that rioters forcibly entering the building had the intent to do damage to either property or persons." The officer in charge received that order, and it was passed along to the men. One sergeant's affidavit names the officer, and recounts receiving the order from him. In the sergeant's own words, "The building would be defended at all costs."

Other statements by individual soldiers describe actions taken to minimize damage which the rioters were attempting to cause. Several soldiers describe throwing and firing rifle-launched tear gas grenades at rioters who were hurling Molotov cocktails at the buildings. Another describes using similar agents "to keep the crowd from entering the YMCA," while still others describe action by themselves or other soldiers in physically routing Panamanians from the YMCA after they had come in through the windows.

Exhibit C

**TRANSCRIPT OF THE UNITED STATES ORAL PRESENTATION ON
FEBRUARY 14TH AND 15TH, 1964, TO THE COMMITTEE
ESTABLISHED UNDER THE RESOLUTION OF THE
OAS/OC, FEBRUARY 6, 1964**

STATEMENT BY

**EDWIN M. MARTIN, UNITED STATES REPRESENTATIVE
ON FEBRUARY 12, 1964 TO THE
COMMITTEE ESTABLISHED UNDER THE
RESOLUTION OF THE OAS/OC, FEBRUARY 6, 1964**

In answer to a question by Ambassador Plate, Chairman of the Committee, on why the OAS Peace Commission had not succeeded in its mission, Ambassador Martin stated that there was no question but that the Peace Commission took its task very seriously and went about its work with great diligence, tact and fairness. He indicated that he had been hopeful that the agreement reached and announced by the Chairman of the Commission on the morning of the 15th of January would have gotten Panama and the United States back around the table. However, in the course of that evening, the Panamanian Government felt compelled to issue a statement that the agreement was not satisfactory and to request additional assurances. Ambassador Martin said that he did not know what factors or what pressures and arguments had persuaded President Chiari to take this position. He was sure that President Chiari was aware of the dangers inherent in a problem of this sort and in its continuance.

Ambassador Martin reviewed the efforts made by the Peace Commission to arrive at an agreement, an effort which did not succeed. He felt that they had been very close to a solution as evidenced by the agreement reached and then backed away from by Panama. He also stated that solution had been extremely close in Washington, although he admitted that he was a born optimist and possibly would not be long in the area of foreign affairs if he were not. The Ambassador declared that he cherished

the hope that, with the question and answer segment of the Peace Commission record to clarify the final agreement that the Commission had proposed, it would be possible to make clear that the delegates were not speaking just about interpretation of the treaties but about the treaty provisions themselves. He also pointed out that the final document presented by the Commission and accepted by the United States went well beyond the document agreed upon on the 15th of January and mentioned both the "Canal" and the "Treaties," while neither of these were mentioned on the 15th. He thought that the document he mentioned plus the question and answer device could provide the substance or the basis to find a formula of words, a set of sentences, which President Chiari could find it possible to sell and convince the Panamanian people that he had gotten justice for the Panamanian cause and would, at the same time, be acceptable to the United States Government. He emphasized that the delegates had been very, very close here, and it appeared to him that they were now dealing only with marginal questions.

Also mentioned was Ambassador Martin's impression that the Panamanian Government might have been looking forward to the visit of the present commission in order to resume some attempt to work out a form of language. Certainly, the U.S. would be glad to participate in this endeavour and make new proposals within this framework. Speaking personally, he stated that, from everything he could learn, he was certain that it was to the advantage of both parties to settle matters sooner rather than later. Delay would be bad for everyone concerned. He was hopeful that the occasion of the commission's presence in Panama would present an opportunity for additional work on the problem in order to get Panama and the U.S., once more, around the table. It was his feeling, he said, and some Panamanian friends had indicated as much to him, that a solution recommended by a Latin American body would be more readily acceptable to the Panamanian people than one worked out bilaterally or through any other government.

It was also made clear by Ambassador Martin that anything that could be done to promote a solution of the problem would be helpful, but that an inquiry in which past events were rehashed and charges made and rebutted, would not really be designed to calm the situation or the emotions of the people. If such a procedure were necessary, the U.S. was ready to proceed on that basis, he said. However, if a solution could be found before the topics became the subject of major public debate, the better for both sides.

FIRST SESSION

EL PANAMA HILTON HOTEL, PANAMA CITY,
REPUBLIC OF PANAMA
4:30 P.M., FEBRUARY 14, 1964

MR. MARTIN: Well, Gentlemen, we appreciate this opportunity to appear before you. We have with us today, in accordance with what we understand to be your wishes, Governor Fleming, the Lieutenant Governor whom you all met yesterday, Captain Wall of the Police force, Mr. Speir, the principal of the high school.

We propose to proceed with the Lieutenant Governor, who was Acting Governor during the day and evening of the 9th, starting in the afternoon. He and Captain Wall will talk about the actions of that day which they observed and participated in. The principal of the high school is here for any questions you might have, as is Governor Fleming. If, during the presentation, there are matters you would like him to clarify, he is entirely at your disposal.

We understand that it will be all right to make this presentation in English, but we have people with us who can translate if there are any points that are unclear.

As I indicated to you yesterday, what we propose to do is to talk and, during some of the talk, we will have slides here

of the scenes about which the speaker is talking. At other points we will interrupt briefly for a film which we think illustrates one of the points that is being made; so that the film and the slides will be mingled into the disclosure as it goes forward.

Our plan is to proceed today with the march of the students into the Canal Zone and their return and the events of the night of January 9th, both in Panama City and on the Colon side, up to the time the military took over, a time which varied, they having been called upon about 8:00, but it took time to get out of their barracks and into vehicles and on the spot. So, it runs us well into the evening of the 9th. And tomorrow, at your convenience, we are prepared to have here General O'Meara to answer questions in the same way as Governor Fleming is here today, as well as General Mabry who was the operational commander, and Colonel Sachse whom you saw yesterday on the Colon side who was the operational commander there. And, they will all be here ready to answer questions and make a similar presentation on the events of the rest of the 9th, the 10th, the 11th, and 12th, until major acts of violence ceased.

Now, before asking Lieutenant Governor Parker to discuss the specific events of the afternoon of the 9th, I thought it might be useful to sketch in very briefly the developments with respect to the flying of the flag in front of the Balboa High School which preceded the march of the students to the high school.

During the talks between President Chiari and President Kennedy in June, I believe it was, of 1962, the Panamanian representatives raised a number of specific questions on things that they thought needed change in order to improve relations between the two countries. And, it was agreed by the two presidents, as I am sure you all know, that there be set up a joint commission to look into these questions and see what kinds of practical solutions to prac-

tical problems could be arrived at. One of the questions raised at that time was the flying of the Panamanian flag along with the United States flag at a certain number of points in the Panama Canal Zone. And this commission discussed this among the very first items on its agenda. It was discussed in terms of the number of locations where the U.S. flag was flying in front of or on top of civilian installations of the Government in the Canal Zone. The U.S. representatives, the Governor and Ambassador Farland, suggested some 15 locations, I believe, where such joint flying should take place. The discussions proceeded and we began implementing this understanding and flying the Panamanian flag at additional locations where the U.S. flag was flying. The general principle which was agreed formally, I believe, in January 1963, after this discussion of possible locations, was that, in front of civilian official installations, wherever the U.S. flag would fly, the Panamanian flag would fly; and it was left to us to decide where those locations would be. Late in December '63, certain steps having already been taken at some locations, an additional list was prepared and made available. At no point in these lists were schools included as locations at which both flags would fly; and we received no indication that this was unsatisfactory.

As a matter of fact, however, when we began flying the flag at the other points and not flying either flag in front of the schools, we had a problem develop in the Balboa High School as you know. And, on Tuesday morning, January 7th, when neither flag was flown, the students decided to run up the U.S. flag. The Panama Canal authorities took it down since the understanding was that it was both or none. Later that day they again ran up the U.S. flag, and this time surrounded the flagpole with a 24-hour guard of students.

This presented a difficult problem to the Panama Canal Company authorities. Running up the flag of your country

is, certainly, a very patriotic thing to do; in this case it created a situation requiring a certain amount of political finesse. We immediately instituted conversations with various groups, including the students through the school authorities, to explain the reasons for the decision which we had taken and looking to persuading them that perhaps the best answer was to fly both flags. If they felt they wanted to have the U.S. flag flying, that was understandable but, in accord with our agreement, both flags should fly.

The Governor felt that progress was being made in the talks. When he called upon Foreign Minister Solis Thursday afternoon, I believe, just before leaving for the States, the question of the flag issue was mentioned in the conversation, and he indicated that he was trying to use persuasion measures to work this out in a satisfactory manner involving flying both flags; and Foreign Minister Solis said that this was a quite satisfactory approach to the problem.

This was the stance, with reason for optimism that within a day or so this matter would be worked out satisfactorily and peacefully. And, the Governor felt that he was free, after talking to the Foreign Minister about what problems might be forthcoming in the near future, to leave for the United States. He did so at 3:30 Thursday afternoon, and, at this point, turned over the responsibility as Acting Governor to Colonel Parker. I will ask him to pick up the narrative from there. Colonel Parker.

(Copies of maps were distributed to the representatives.)

LIEUTENANT GOVERNOR PARKER: At 4:40 in the afternoon, about one hour after the Governor had left the Canal Zone, I received a telephone call in my office that a number of Panamanian students had entered the Canal Zone and were marching past Gorgas Hospital. This was the first indication or knowledge that we had that the students planned to march. I was told that they were going past the hospital,

past the Governor's residence (photo slide no. 1). And, here is a photograph which you saw yesterday, in front of his house, the students with their banners and flags. They sang their national anthem and then proceeded on down the hill, coming on down this way (indicating on the map). And, a few minutes later the Police called me again and said, "They are headed towards Balboa High School; we must have instructions as to how to handle them because it is a very large crowd." I asked the Chief of Police to meet me in the rear of our office.

This is our Administration building (photo slide no. 2). As the students came around the building, I went here (indicating on the map) with the Chief of Police in a radio car, and I watched the students go down the steps. The students were quite well-dressed. They seemed to be rather orderly. They didn't appear to be the type who would create a major disturbance—no maleantes. I mean, they seemed to be an orderly crowd. I was very relieved when I saw that they appeared to be OK. A number of girls were with them. They went on down the steps, fairly orderly fashion; but they were saying a few things like "Yankees go home or Gringo go home" this sort of thing.

I told the Chief of Police to stop the students at the bottom of the hill below the Administration building, to stop them there and not to permit them to go to the high school—to the front of the high school—because many people had seen them come in and were starting to gather around the high school; and I was afraid that, with the signs that they were carrying and the things that they were saying, if they came too close to our citizens, trouble might develop. Therefore, I told them—the police—there were only a few police, Captain Wall and a few other police—to hold them at the base of the hill.

Captain Wall held them there. He told me on the police radio that they wanted to show their flag in front of the

high school. I told Captain Wall to hold the students at the base of the hill but to permit 4 or 5 of them to take their flag, go in front of the high school, display their flag in front of our flag pole, and permit photographs and pictures to be made so that they could show everyone that they had shown their flag in front of the high school. To explain what happened, how the students were handled, going from the bottom of the hill to the high school and back, I will turn it over to Captain Wall who is the Senior Police Captain on the Pacific side for our police force. Captain Wall.

CAPTAIN WALL: Thank you, Colonel. I arrived at this location (photo slide no. 3) where my police detail, with some 12 men, had stopped the students at the foot of the steps leading down from the Administration building. When I reached the police line, I asked for the leader of the group to come forward and talk with me. And, Guillermo Guevara Paz, about 18 years old—19, possibly—walked out of the group and approached me and spoke to me in very good English. And, I asked him what they proposed to do; and he said they wanted to go to the school and display their flag and sing the national anthem. Now, at the school at this time, we had these people (photo slide no. 4). I told him that I had been instructed to permit 5 persons from his group to proceed to the school for this ceremony, but many of the students in the group overheard this and objected. They wanted to raise their flag on the flag pole at the school. And, much argument developed among the students. Guevara attempted to persuade them—I feel sincerely that he attempted to persuade them to accept this proposal.

And, some 55 minutes elapsed while this persuasion and discussion and disorderly behavior of some of the students in the group went on. They were shouting, "No, no, no" each time he would say what the proposal was. I saw that he didn't have their attention. And, I caused a police

car to be driven to a point in front of the group, and I helped him up on the fender of the car so that he would have some elevation and be able to command their attention (photo slide no. 5); and this did seem to be effective. He talked to them at great length. As I said, some 55 minutes passed.

Finally, about 6:00 o'clock, he came to me and he said that they had agreed that 5 of the students would proceed to the flag pole at the Balboa High School, display their flag and sing the national anthem, after which they would leave. This is another picture (photo slide no. 6) that was made while this 55-minute discussion was going on. I formed the police escort for this group. And, a sixth member of the Panamanian student group joined the 5 that I had authorized, but we permitted that.

And we marched on across toward the flag pole (photo slide no. 7). When we arrived at—just before we arrived at the flag pole, this picture was made (photo slide no. 8). And, you can see a hole in the flag at this point (indicating), four fingers and a thumb. Now, this had been observed previously by some of my men. This is another picture that was made while they were enroute to the base of the flag pole (photo slide no. 9). When he arrived at the base of the flag pole, I stopped.

And, just before this picture was made (photo slide no. 10), I approached our people—the American adults and the American students—and I held up my hands, and I told them what we were going to do. I said that the National Institute students were going to display their flag by holding it by the top edge at the base of the pole, sing the national anthem, and leave. I requested our students and our adults to be quiet and respectful during this ceremony.

This is one of my interpreters (photo slide no. 11) that spoke to the students—the 6 students at the base of the flag pole in Spanish. When they arrived at the base of

the flag pole, several of their number didn't want to go through the ceremony as agreed; they wanted to raise the flag upon the pole on which the American flag was at that time flying (photo slide no. 12). I refused to permit this because I knew that we would certainly have disorder if we permitted that. One of this group, in the discussion that followed immediately after that, I left and went back over to the main body of students awaiting across Gorgona Road. He was only over there about 2 or 3 minutes; and he came back and he was pointing at the top of the pole and insisting that we permit them to put the flag on the pole.

Finally, as the discussion went on at this point, I permitted them to walk across the hedge which surrounds the flagpole and get closer to the base of the pole. Now, when they crossed over the hedge, they were within 4 or 5 feet of our students. They continued to argue among themselves. It appeared that about 3 were insisting upon raising the flag on the pole. And, I had instructed my interpreters—I had a second interpreter there by that time—to ask them to please go through the ceremony as they had agreed. This went on for about 25 minutes. And, this is my interpreter talking here (indicating photo slide no. 13) to 3 of the 6 students that were at the base of the flagpole.

Finally, when I realized that they were going to continue to insist on raising this flag on the pole and they began to shout at our students and our students began to shout at them, then "The Star-Spangled Banner" was sung by our people—the American people. The students joined in; all of the adults joined in. And, after that, it was very clear to me that it made the National Institute students quite angry. By this time, they were pressing forward toward the base of the flag, closer to our people, closer to the students. And, I realized that we might have trouble any minute. So I asked that the police line be formed between these two groups. I instructed the Sergeant to

cause his men to form between the high school students and the National Institute students.

Shortly after that I directed my interpreter to tell the National Institute students that the ceremony was cancelled. I realized that we couldn't go through with the ceremony due to the attitude of both the National Institute students and our students at that time. He asked them to leave and I asked them to leave, telling them that the ceremony was cancelled; and they refused. They continued to shout and press forward against the police line. I instructed my Sergeant in command of this police detail to push them back out of the area. And, this police detail, with the baton in front of them, started to move against them. And, I admonished the Sergeant and all the men not to rough them up.

This is one of the pictures that was made as we were moving them out from the base of the flag pole (photo slide no. 14). This is one of the National Institute students (indicating); this right here (indicating) is his trousers, his shirt, his belt here, his hand on the flag here (indicating). This is the Sergeant in charge of the detail (indicating). He had his baton in front of him, as did the others. They were moving them forward. And, as they crossed over the hedge, this man fell (indicating), and one other fell. They got up. They were struggling with the police. They were resisting violently. And they fell down again—at least 2 of them fell down again shortly after they passed over the hedge. One of my policemen picked up one of them—picked him up off the ground—and continued to move across Gorgona Road to the main body of students.

This is a picture that was made while going back across the road (photo slide no. 15), and you can see here (indicating) the flag wrapped around this person here (indicating)—quite a bit of strain on the flag at that time.

This is a picture that was made as soon as the 6 students arrived back across Gorgona Road in front of the students

that had been waiting there for them (photo slide no. 16). And, they are now showing the torn flag to the other students. And, you can see by the expression here (indicating) that this student is quite angry. They were angry; they were shouting. And, by this time all of the students were shouting and abusing me for permitting this thing to happen over at the base of our flag pole. At that time a policeman that was standing within about 5 feet of me was struck with a stone on his helmet liner which made a hole in the liner about the size of a half dollar. The students that had been at the base of the flag pole moved into the main body of students. About 2 or 3 minutes elapsed; and then they all broke and ran as if commanded, as if they all agreed on this.

OAS AMBASSADOR: Can you tell us where did the stone come from?

CAPTAIN WALL: It came from the direction of the students because we were facing the students, and it hit him in the forehead.

They broke and ran up the hill in the direction of the steps that lead to the front of the Administration Building.

LIEUTENANT GOVERNOR PARKER: Would you explain that the flag was torn—

CAPTAIN WALL: Yes. On the way over, when the 6 students came through the police line, one of my sergeants saw that the flag was torn; and he tried to find a pin—tried to assist in the pinning of the flag. He even offered to use his pin on his shoulder, on his sergeant's chevron, to pin the flag.

LIEUTENANT GOVERNOR PARKER: Did you see any of the Americans touch the flag—or try to get hold of the flag?

CAPTAIN WALL: None of the police officers touched the flag. I saw no American touch the flag. No student—no Balboa High School student touched the flag. The only

possible contact with the flag by our people was—in pushing back against these students with their batons—and they were struggling—it certainly is possible that this flag touched the baton or touched their hands as they moved backward. But, I was following right along behind this police detail. It was a very tense situation. I chose to be right there with them all the time.

LIEUTENANT GOVERNOR PARKER: We have a film that summarizes—that shows the same action on film. I'd like to have Mr. Baldwin narrate this film very briefly.

(A movie film was shown; Mr. Baldwin narrated in Spanish. See attachment 1.)

LIEUTENANT GOVERNOR PARKER: I wanted to point out those two flags because we have been flying the Panamanian flag and the U.S. flag at our Administration Building for a long time. They are in full sight of the high school—within 150 or 200 yards—so that they cover the entire area there—and have been flying for a long time.

When Captain Wall returned the students back to the base of the Administration Building, I had hoped that we could get the students out of the Canal Zone very promptly, with no difficulty. So, I had arranged for 3 large buses to be waiting for the Panamanian students when they came back from in front of the high school. We offered free transportation to the students in an attempt to get them back to Panama without causing any more encounters. They did not accept the transportation.

Instead, they turned and ran up the steps of the Administration Building—most of them—some of them went around—most of them ran back up this way (pointing on the map) and on back this road (indicating); a few went around this way (indicating). I was standing by the building here (indicating); and the students came back by me. A group of them tried to take down the American flag which was flying at the building, but they were prevented.

from doing so by some of our civilians who stood around the flagpole. They then continued in around my office building, broke windows in the office building as they went around the corner. I went to my office with our Chief of Police and a police radio to listen to the action as they went back up the road (pointing on the map)—as they went back up the road. We all thought that we had been successful in avoiding an incident because we had had no clash between the two people. We were very relieved that it had gotten off without anybody being hurt, and that the students were going back.

But, as soon as they went by the Governor's house on the way back, the students started causing more damage. They started breaking all the street lights. They threw stones at automobiles. They stopped a woman who was driving an automobile—an American woman—got around her car, said, "Kill the Gringa", started shaking the car; and another car coming up behind her honked his horn and they left. They broke windows in the hospital—in the maternity ward of the hospital—as they went back out. And, as they went by the new hospital building here (indicating on the map)—as they went by this area, they climbed up on the roof here (indicating), threw down timbers, pieces of steel, cement bags, picked up pieces of timber and other objects on their way back out of the Canal Zone.

As soon as we heard that the students were causing damage, I asked the Chief of Police if the Panamanian authorities had been contacted for help. He said that he had told his liaison man to contact the appropriate Panamanian authorities to let them know that the students were causing difficulty and that we would like to have their help in taking care of the students as they got back outside the Canal Zone. The students were breaking these windows, stopping cars, doing this damage. There was a question as to whether we should arrest some of them; after all, they

were causing a fair amount of damage. The Chief of Police and I discussed this—shall we arrest some of these people and pick them up, because this is not a very pleasant thing? But, we decided, no, get them out of the Canal Zone, no incident. So, we did not arrest or touch any of the students.

The police continued to follow them, and the students walked on out. When they got to this point (photo slide no. 17), it was getting quite dark, as they got back near the Canal Zone boundary; this is how dark it was (indicating), about 6:30 at night. We stopped here yesterday with the bus. This is a street in the Canal Zone (indicating); Panama is over here (indicating). See this student (indicating). This is one of the students who was down around the flagpole. This is a big log (indicating) which he picked up by Gorgas Hospital. He later threw this log through the window of a car with a woman driving it, shattered the glass, and it ended up in the back seat—in the Canal Zone.

The same time (photo slide no. 18)—this is in the Canal Zone (indicating); Panama is over on the other side of the street (indicating). This is a traffic light (indicating); these same students as they left the Canal Zone, throwing rocks against the traffic light. More of them (photo slide no. 19)—these same students. Next morning (photo slide no. 20)—this is the traffic light that they knocked down (indicating). This is some of the debris that they left as they went out (indicating on projected photo slide). This is a school (indicating on projected photo slide)—a grammar school in the Canal Zone—Ancon School—this was painted on the wall that night (indicating)—this is the next morning.

When the students finally got out of the Canal Zone about 20 minutes of 7:00, I still thought that everything possibly would be all right. We were continuing to call the Panamanian authorities. They assured us that they were send-

ing people up to help control the students. The students went back to the Instituto Nacional—back into their building—very briefly—right back here (indicating on map). And, I thought everything probably was all right. And then, the first report of fires—they took a car—overtaken a car and set it on fire in front of the Judge's house. This was about a quarter of 7:00—right here (photo slide no. 21)—shortly after the students left the Canal Zone—in front of the Judge's house. This car set on fire (indicating)—this was the first one, right here (indicating), and then this one (indicating). Our police then, who had followed them out, said that the crowds were starting to form as the students then came back out of the Instituto Nacional; that people were forming on the street; they that were carrying Molotov cocktails and appearing from the school with many rocks; apparently they had obtained a lot of rocks inside the school.

I called Quarry Heights, our military headquarters, at 10 minutes of 7:00. I said, "It looks as though there may be trouble along the boundary." I explained what had happened with the students. I asked that the troops be alerted so that they might be called—might be obtained in a hurry if we needed them. I then called the American Embassy, at 5 minutes of 7:00, shortly after the students had left the Canal Zone. I spoke to the Staff Duty Officer in the American Embassy—the Chargé d'Affaires was not there—I asked him to call President Chiari immediately and deliver a formal protest from me as Acting Governor of the Canal Zone; that Panamanian students had caused considerable damage in the Canal Zone and were burning cars and destroying property within the Canal Zone right then; they were starting to throw rocks at all the cars going up and down 4th of July Avenue.

Then, for a few minutes after 7:00 o'clock, it appeared that things had quieted down. The activities stopped briefly. I called Quarry Heights, the military command,

and said, "Maybe it will be OK. Maybe our police can handle it, and the Panamanian authorities have told us that help will be coming, but still keep the troops alerted." In a few minutes the situation got much worse. They started tearing down the fence along 4th of July Avenue. From experience in previous riots 4 or 5 years ago, we had built a fence along here (indicating on the map). They started tearing this fence down. More cars were being burned. I got reports on the police radio, to which I was listening—Captain Wall reporting and others—that more and more people were coming out in the streets.

I talked to General O'Meara on the telephone and told General O'Meara that the situation appeared, from the radio reports, to be extremely serious, and it would probably be necessary to call in the troops. He said, "Please use the police as long as you can and see if you can contain it and handle the situation." I said, "Before asking that troops be used, I will personally inspect the border and see what the situation is." So, I got in a car at a quarter of 8:00—one hour after the students had left the Canal Zone—and went to the Tivoli Hotel—along in here (indicating on the map)—very dark, a great deal of confusion. Many Panamanian cars had come and parked in the Canal Zone so that they wouldn't be destroyed rather than leave them on 4th of July Avenue—many cars with Panamanian licenses—to get them out of the way—many people running back and forth, trying to climb over the fence. I drove up here (indicating on the map); my car was hit with a rock. There were many rocks on the road. People were trying to climb over the fence to the Tivoli Hotel. All along here (indicating) I could see from here (indicating) down here about 5,000 or 6,000 people. I could not understand how they had formed so fast, where they had come from this fast, because the sidewalk was packed with people. There were many people in Shaler Plaza. Yes, this is an indication (photo slide no. 22). This is a little bit later. But, as we looked along, we saw people

like this (indicating), many of them moving in many directions, and no apparent—one particular point they were going. This is opposite the Tivoli Hotel, right about here (indicating on map)—people in Shaler Plaza in the Canal Zone destroying and attacking our bus terminal, taking the bus terminal in the Canal Zone apart.

In spite of the fact that there were fires present along the boundary line, there were no bomberos present—no firemen coming to put them out—except our own fire trucks that were then trying to come out to put out the fires in the Canal Zone. By that time—by the time I was at the Tivoli Hotel, we had made 7 calls to the Panamanian authorities to ask for assistance along the boundary in controlling Panamanians. Several times we had been promised that help would come. But, at a quarter of 8:00 as I stood in front of the Tivoli Hotel, there was no indication of any assistance from the Guardia Nacional or other Panamanian authorities. This convinced me that there was going to be no assistance in handling this tremendous crowd which had grown up.

I would like to say a few words about our police force. We have in the Canal Zone a small well-trained police force. Its purpose is to preserve law and order in the Canal Zone. We only have about 180 for the entire Canal Zone—both sides, Atlantic and Pacific, and in the middle as well. In the Balboa District on this side of the Canal—on this side of the Isthmus—in the entire district, we had on duty when the Panamanian students entered in, 20 policemen. We started calling policemen back to duty, getting them at their house, the restaurants, wherever they were, telling them to come back, it looked like we might have trouble. By the time the students left the Canal Zone, we had 40 policemen. By the time I got to the Tivoli Hotel, every policeman we had in the Canal Zone on this side was on duty—80 policemen.

I saw myself 5,000 to 6,000 people in one location along here (indicating), and I knew others were forming here

(indicating on the map). It was quite apparent to me that our police would have a lot of difficulty in handling these crowds with this number of policemen, with no assistance from Panamanian authorities. The crowd at that time was coming right down here (indicating). I was sure—I was positive that, within a very few minutes, the crowd would have surrounded the Tivoli Hotel in which we had many people—many old women as well—we have a number of elderly women who live there. And, this is a large housing area (indicating), with large families—women and children, particularly—this is a large-family area. And, the Panamanian crowds at that time were within several hundred yards of this housing area. With this situation, I went immediately to General O'Meara in my car, reported to General O'Meara that I was unable to maintain law and order in the Canal Zone with the civilian authorities—with the police and our own firemen. I requested that he assume command for the purpose of providing military assistance in maintaining law and order in the Canal Zone.

I would like to show you a brief film here of some of the scenes of that night—some of them are about the same time, very early, about 8:00 o'clock; others are a little bit later during the evening. But, to give you some idea of what it looked like at this time, I would like to show this film and have Mr. Baldwin explain it. (Mr. Baldwin narrated in Spanish during the film showing. See attachment 2)

LIEUTENANT GOVERNOR PARKER: I would now like to cover for you, with the help of Captain Wall, who saw much of this myself, some of the major areas in which we had difficulty with the Panamanian crowds within the Canal Zone. I am going to cover a few of these areas; they are marked on your map. You saw many of them on the ground yesterday. I would like to start first here at the Tivoli Hotel (pointing on the map), an area of major concern to us.

CAPTAIN WALL: It was about 7:30 when this mob in front of the Institute on 4th of July Avenue marched toward the Tivoli Hotel. They arrived there about 7:35 or 7:40. I moved to the Tivoli Hotel at that time, and I was looking down on Shaler Triangle. I saw 2,000 to 3,000 demonstrators down there. People were coming from all areas of Panama into the Shaler Triangle area. I had 8 policemen at this location.

About 8:40—pardon me, 7:40, about 50 persons from the mob down in Kennedy Avenue tried to come over the fence in the lower parking circle in front of the Tivoli (photo slide no. 23) and the police detail at that time used tear gas. They threw the tear gas down along the fence and repelled the attack. Then the mob started surging toward the laundry and toward the freight house. When they got to the freight house, they turned over this car—pardon me, to the laundry, they turned this car (photo slide no. 24) and set it on fire.

LIEUTENANT GOVERNOR PARKER: This was about 100 yards—150 yards in the Canal Zone.

CAPTAIN WALL:—about 150 yards in the Canal Zone. A mob of about 200 persons broke away from this large body of people that were completely filling President Avenue at this time. I estimate the crowd at about 3,000. About 200 persons broke away from this group and marched up Frangipani toward the residential section. This photograph shows the Panama flag and some of the persons as they came around this building from their group or from the main body of some 3,000 persons who were over on President Kennedy Avenue. We had 4 policemen at this particular location, at that time. They used their teargas—the remaining teargas that they had. They had been in action up at the Tivoli with teargas; and they had come down here following this group. They used all of their teargas and repelled these people for the time being. Now, the residential section is about 150

yards from the point that these demonstrators marched. They had come up to a point about midway of the Sanitary office before the men used the gas and caused them to retreat (photo slide no. 25). Now, at this time Molotov cocktails were being thrown into the laundry. The laundry is right here (pointing on a projected photo slide). A car was on fire here (indicating); you can see it burning, down on Frangipani Street in Panama—right here (indicating). The railroad coach—one of several railroad coaches that were spotted on the railroad track opposite the railroad station which is immediately the other side of the laundry here (indicating)—was later set on fire; within 10 minutes after this action, the railroad coach was on fire. Another car was pushed into the laundry here (indicating) and set on fire. We had 2 cars in there on fire. We had the railroad coach burning. We had Molotov cocktails thrown into the freight house to which is about opposite the point where this car is burning here (indicating). I went around to the Roosevelt Avenue side of the laundry. I had 8 policemen on Roosevelt Avenue facing this mob. The mob came into the Canal Zone, up Roosevelt Avenue opposite the railroad station, broke into the railroad station, looted the railroad station, tried to burn it; and at that time they set fire to the coach that I have just mentioned.

I spoke of these "Molotov cocktails." I have one here (displaying a sample). We had all kinds. Just about any bottle that could be found that would hold liquid was used as a Molotov cocktail. It just has a wick: they fill it with gasoline and light it and throw it.

At 9:30 p.m., I heard on the radio that an attack was being made on the District Judge's house by the mob that, by this time, had torn down the chain link fence that extends from "J" Street all the way up past the District Court. They had torn this fence down. They were charging up the hill, throwing stones. They had thrown 3 Molotov cocktails—2 into Judge Crowe's house and 1 underneath his house. The police at that time fired into the

air to cause these demonstrators to retreat in order to permit the fire truck to come in to put out the fire. The fire truck had come in there; there was a hail of stones; they stopped. The police, by firing over their heads, had caused them to retreat; and then the fire department got in and helped Judge Crowe who was in the house himself and the policemen, who were in there trying to help put out the fire. The fire department came in and put out the fire.

LIEUTENANT GOVERNOR PARKER: I would like to add that, for firefighters, we use Panamanians, for the most part; we have some U.S., but, basically Panamanians. I, personally, saw many of them in action that night, and they performed very bravely under a heavy hail of rocks, all the way through; there were many brave feats on the part of the firefighters.

CAPTAIN WALL: Shortly after 9:00 o'clock I received reports on the police radio that there were some 1,500 to 2,000 demonstrators on Fourth of July at Balboa Road. I immediately went to that location. I had a Sergeant and 9 men at this location facing some 1,500 to 2,000 demonstrators that had tried to penetrate the residential section of Balboa by going up Balboa Road to a point about 150 yards from the police booth. Now, the police booth is about 100 yards from the intersection of Balboa Road and Fourth of July Avenue in the direction of Balboa. My men at this location had stopped this advance into the Balboa residential section by use of revolver fire over the heads of the demonstrators. I assessed this situation, and I immediately called for assistance. And, at 9:17, one of my squads was relieved over on Roosevelt Avenue; and he, the Sergeant in charge of this squad, took 10 men and reinforced this squad on Balboa Road. That gave me 2 squads on Balboa Road.

I was still quite concerned about this situation. The demonstrators had come upon the hill because we have a

hill there—we call it Reservoir Hill. They had gone upon this hill and were rolling rocks down the hill onto the police detail; and they were stoning them. And, the Sergeant in charge of this detail reported to me that he heard sniper fire; they could hear the bullets zing over their heads; and the noise of the report was coming from down in Panama. The gas line was set on fire. The grass on Quarry Heights reservation was set on fire by these people. They tore down the police booth—they tore the roof off the police booth. They tore the roof off the bus shelter at this location, and they used it to barricade themselves on Balboa Road opposite the police booth. Now, my men were about 100 yards up Balboa Road from this point when I arrived there to inspect the situation.

LIEUTENANT GOVERNOR PARKER: Notice we can come back if you would like to have more questions on these areas. I am trying to get around and cover the whole thing. Those were the major areas in which, on the Pacific side, our police were involved with the mobs within the Canal Zone.

I would like to summarize very briefly what happened in Cristobal. Nearly everything that happened here, Captain Wall saw, and I heard on the police radio. My knowledge of Cristobal is only based on the reports of our police, and I will give that very briefly. You saw much of this yesterday. This is Colon and Panama, Cristobal within the Canal Zone, boundary here (pointing on the map).

About 9:15 a large crowd of about 1,500 Panamanians came in here (indicating on the map) to our headquarters. We fly 2 flags at this headquarters, have for a long time. It is our major headquarters on the Atlantic side. We fly the U. S. flag and the Panamanian flag. They were both down at that time; it was night. They raised the Panamanian flag—the crowd raised the Panamanian flag at this building, marched around it, came on out. Our police did not interfere with this parade, did not touch anyone,

talked to them in an effort to keep them quiet, and they went on back out after an hour, with minor damage—broke a few windows. Then the crowds formed about in here (indicating on the map) and started coming again into the Canal Zone. They broke in that same night—about 10:00 o'clock they broke into our big building over here (indicating), our old commissary building that we have many of our offices in. They actually went into this building, took out furniture, safes, files, cabinets, broke the windows—took it out in the street and threw it in the street. They broke into the Masonic Temple and did the same thing. A crowd also attacked the YMCA building, a private building—not Government—used for meetings, the Rotary Club, Lions and others, used by Panamanians and U. S. alike, but in the Canal Zone—broke into this, started looting it, taking out property, files, burning it; and, our police and military had to go into that building and eject them. They were able to push them out. That night then sniper fire started along here (indicating on the map); and our police pulled out, I think, around 11 p.m. and left the military in charge along the boundary. But, our police did not fire any shots in Cristobal the first night. We fired no weapons over here, although weapons were fired against us, and although 3 of our main buildings had been looted. Later on, in the days that went ahead, the next 3 or 4 days, these buildings were reattacked and were burned, and 2 of them are almost completely destroyed, as you know. One reason we did not fire or find it necessary to fire on the Atlantic side is that we had some assistance from the Panamanian authorities. Their people—Guardia Nacional and some of their other representatives assisted in attempting to handle the crowd, although they were not completely successful. One of our fire trucks, early the next morning, that came down here (indicating on the map) to try to put out a fire, before we had fired a shot, got 3 or 4 bullet holes in it, rapid fire into our fire truck. I believe more information on this will be furnished you because most

of the story over there after the first night, as it is here, others can tell you better than I can.

I didn't summarize—I possibly should summarize for you very briefly—say just a word about the instructions that our police have on handling mobs, and the training that they have had. Captain Wall, would you just very quickly summarize the training and summarize the steps that we normally go through in handling a crowd of this sort.

Captain Wall: Our men are well trained in riot control. They have had a lot of experience. In 1960 we had Dr. Joseph B. Lohman come here to the Canal Zone and lecture on mob psychology and crowd behavior. Immediately prior to that, we had conducted a very comprehensive course in riot control. And, since that time, we have repeated that course to all new policemen. And, we have had refresher training to all those who took the course in 1960. Our instructions to our men—and this is covered thoroughly in the training—is that, to quell a disturbance, first you use water or you use teargas. If that is not effective, then to protect life, you may use firearms. First, if you use firearms, they are instructed to fire over the heads of the demonstrators. If this is not effective, they fire into the ground—and I don't mean into the ground in front of the demonstrators necessarily—they fire into the shoulders of the road. And, as a last resort, when the demonstrators are moving into residential sections where life is in danger, they fire into the pavement in front of them or they fire into the ground in front of them. And then, finally, as a final resort to protect life again, they may fire at the demonstrator.

Lieutenant Governor Parker: Was it necessary to fire at them that evening, on Friday night?

Captain Wall: On January 9th and subsequent to that time, it has not been necessary to fire into the crowd. And, I have found no evidence in my exhaustive investigation

that their instructions were disobeyed or that they failed to follow their training in this respect.

Lieutenant Governor Parker: Sir, that concludes our summary that we have of the events.

Mr. Maintain: I'd just like to add three points to this factual survey. First, I think it is important, in the light of some things that have been said, in appraising the decision of the police authorities in those few occasions when they had to take this decision to fire over the heads or into the ground as a last resort—that we appreciate the situation they were in. They had been called together hastily, from restaurants and homes, to meet an unexpected crisis. They had used up the teargas that was available to them. Communications were in a difficult state in the Canal Zone. And, they had no other means at hand to deal with the public, as the firefighting equipment, the hoses, were all busy fighting fires.

Moreover, they were not dealing with a mob coming in peacefully to plant a flag. They were dealing with a mob which had set fire to property in the Canal Zone, had set fire to their own property in Panama. They were a mob out of control, not rational in what they were doing. It was a mob which was throwing stones, was throwing Molotov cocktails. It was a mob which had attacked one dwelling, namely the dwelling of Judge Crowe. Therefore, there was every reason for a police officer, exercising his responsibility for protecting life of American civilians, to assume that, if this mob was allowed to proceed to the area in which people were living, there would be loss of life as well as property. And, in every case in which they did find it necessary to fire their weapons over the heads or, in one or two cases, into the ground in front, the mob was within a relatively small number of yards of residential areas which had no fences or other protection, no obstacles to be surmounted, except a very small number of police. It was in this situation, defending against this kind

of aggressive action in our territory that these steps were taken.

A second quite different point—there has been quite a bit of discussion about the student march into the Canal Zone, as to whether this was a planned operation or a spontaneous demonstration of patriotism. We, I think, on the U. S. side, are not in a position to have authoritative inside information on this point. However, I think there is one passage that is of interest which should be, if it is not already, in the records of the committee. You will recall that, when the Police Captain called upon the leader of the group to step forward, it was a gentleman named Guillermo Guevara Paz that stepped forward—and you saw a picture of him up on top of the fender of the car arguing with the students about what procedure should be followed and trying to persuade them to follow the procedure that had been suggested by the Captain. This same student wrote an article on January 14th, which appeared in the *Estrella de Panama*, and I'd like to read a couple sentences in an English translation from this article. He said:

"I interviewed the high school students that were guarding the flag. They informed me they did not have any objection for both flags to be flown jointly; that their only concern was to have their flag in front of their school. This seemed to be a reasonable request, and I so informed my companions, the organizers of the manifestation to the Canal Zone on the afternoon of Thursday."

In other words, he referred specifically to "organizers" of the demonstration. And, to continue with the quotation,

"About 3 p.m. Francisco Diaz, Secretary of the Federated Association of the National Institute, obtained written authorization from the principal of the school, Professor Diegemo Real, and he gave the authoriza-

tion as well for the flag that was used in the student movement of 12 December 1948."

Now, this, I think, is interesting, indicating that, as far as he was concerned, there was advance organization and preparation for this march.

Lastly, one of the problems that I think has puzzled many of us who have been concerned about this whole incident—what seems in retrospect and seemed to the Acting Governor at the time to have been a march of students which might have erupted into violence within the Canal Zone but that seemed to be ending with their marching out with a certain amount of property damage but apparently peaceably in terms of clashes between people, there developed in the course of the night into a very uncontrolled mob, attacking Canal Zone property and Panamanian property as well. It developed very rapidly into a very large crowd, well equipped with rocks and Molotov cocktails. I don't know what the full story is on how this moved as rapidly as it did and what inflamed the feeling as strongly as it did for people to take the kinds of irrational actions which were taken. But, I think that there is evidence that some individuals, who had positions of authority with information media, did everything they could to see that what was an incident, almost under control, should get out of control. We have taken just one radio station and recorded some of the things that were said over that radio station between 7:30, when the mob was forming, and 11 o'clock that night—or midnight that night—to the Panamanian people, which may have been among the things that was responsible for the outburst of emotion which took place. This is in Spanish. We'd like to run—I think it's about a 5 or 6 minute tape of things that were said on this station. I would just call attention to two kinds of things—one is editorializing, if you may say so, expressing opinions about what ought to be done to the "gringos" and they are fairly strong statements; the second is a gross misrepre-

sentation of facts. There is reference to airplanes threatening Panamanians. There was one 2-seater airplane with a loud speaker which flew up and down asking Canal Zone residents to return to their homes and people, who were not Canal Zone residents, to return to their homes, to try to keep the damage to life at the minimum. This was essentially like a Piper Cub, one of the smallest planes we have in the service.

There were references to tanks in place to fire, and cannon firing. There were no tanks anywhere near the boundary during this period; there were no cannon. And these, obviously, were mis-statements of facts which had the effect of inflaming people's feelings. Whether they were designed so, you will have to read into the motives of those who said them; but they certainly would have that effect, I would think.

(A tape recording in Spanish was played. See attachment 3)

Mr. Martin: I don't know how much of that was really understandable, but we have a transcript if it would help. I think this is all we have to present in today's presentation, but we do have the principal of the high school and, of course, the Governor, if there are any questions that you would like to ask. All the rest of us are also available for questions. Mr. Chairman, we are in your hands.

Chairman: Did you know that the Panamanian students were coming and at what time?

Mr. Speir: No, sir, I did not.

OAS Ambassador: Had you been there the moment that the students arrived?

Mr. Speir: Yes, sir, I was present when they arrived. We did not know they were coming until they arrived.

OAS Ambassador: There were many students Americans?

Mr. Speir: Not at the time that they arrived. After they arrived—after the Panamanian students arrived, many students and adults then came to the campus. At the time that they arrived, perhaps not more than 25 students were still around the school. School was dismissed at 2:45, and this was about 4:30. So, almost everyone had gone home then.

OAS Ambassador: Do you have something that you would like to add?

Mr. Speir: Not particularly, sir. I think it has been very well covered. I would be most happy to answer any questions.

OAS Ambassador: Mr. Principal, I would like to add a question. One of our witnesses we have had has stated that the day before this incident started, that means the 8th, a delegation of 2 or 3 students went to see you and let you know what they were planning, to have this kind of ceremony before the school, and that you were aware that they were going to do that—they were going to do that—and that you sent them on to talk with the public relations—to see Mr. Baldwin. I would like to know if that is correct.

Mr. Speir: It is absolutely incorrect. Three students visited me in my office on Wednesday, Guevara Paz and two others whose names I do not know. They said they were reporters for the school newspaper—Instituto Nacional newspaper. They asked me some questions about the flag. They said they'd like to get an article for their school newspaper. When they said they wanted an article for the school newspaper, I referred them to the Public Information Office, called his office—Mr. Baldwin's office—arranged an appointment for them, showed them how to get there because it's right in sight of the high school, and they left. That was the extent of the conversation. There was no mention at any time, even indirectly, of anything planned, as far as coming back the next day.

OAS Ambassador: When did you see them, Mr. Baldwin?

Mr. Baldwin: When the students came to my office, they wanted to know what was going on in the Balboa High School. I explained to them about the joint communique that had been issued by the two governments pertaining to the flags of the United States and Panama. I also explained to them that the schools were not to be included as to having both flags. Then they asked me—why did the students insist on having the U.S. flag up; and I answered to them that they were just as patriotic as they, the Panamanian students. But, at no time did they tell me that they were coming into the school on a march or planting the flag or anything like that. All right, that's all.

OAS Ambassador: Apparently a letter appeared in the *Washington Post*, in one of those letters to the Mail Box—a letter to the editor—just a statement that some ex-student from down here—somebody had written a girl living in Arlington stating that there was some type of atmosphere at the school—that something might happen between U.S. and Panamanian students; that something would happen in those days; that the things were boiling in the school itself. Was there anything done by the authorities in the school, talking about peace to try to soften up between U.S. and Panamanians in the school?

Mr. Speir: Number one—I find it difficult to comment on a letter that I have not seen and don't know the contents of. If the letter stated that there was animosity between the American students and the Panamanian students in Balboa High School—

OAS Ambassador: Well, it's due to the flag question.

Mr. Speir: —due to the flag or any other question. I can say that that is false. There was no animosity between the U.S. and the Panamanian students within Balboa

High School. I think this is demonstrated by the fact that our Panamanian students—tuition students—have returned to Balboa High School immediately after school was resumed, and there has been no animosity.

Mr. Martin: How many do you have?

Mr. Speir: We have about 75 at the present time—about 75 Panamanian students in Balboa High School. There are about 300 Panamanian students in all of the schools. As you know, they are on a space available basis.

Mr. Martin: There was another question on what you did. Didn't you have teachers making speeches—Governor, wasn't there some program of this sort?

Mr. Speir: This was after school resumed on the 15th, in response to Governor Fleming's talk to us on the 14th. The 14th of January was the day before classes resumed on the 15th.

Lieutenant Governor Parker: I think it might be well, if I am in order, to amplify the question that he has asked—if you would comment, Mr. Speir, on the extent to which this flying of the American flag at Balboa High School was supported by the numbers of students involved, and who they were, and what attempts you made yourself to calm this situation down or to take care of it, knowing that you had a problem in your school. I think this was really the question that he is getting at. Would you comment on who was involved in this and what you were able to do about it within the school.

Mr. Speir: Balboa High School has 1,850 students; it is a large high school. At no time were there more than 150 to 200 students in the area of the flag pole. This means per se that most of the students did not involve themselves in this issue. While classes were going on, we made a very careful check of the attendance, during this period; our absenteeism was only slightly—1% or 2%—slightly higher than a normal school day. Most of the time—all of

the time a minimum of 1700 of these students were right in the classes doing what they should be doing, learning.

Our feeling was that this was a protest demonstration. Once the protest had been made, the point would have been made, and then a solution would be found—either the flying of two flags or none. Governor Fleming made it very clear that the decision as to the number of sites was not final and absolute and could be revised if the people so wished.

We were concentrating our efforts on those who were doing the actual agitation. I would like to make it very clear that it was a positive demonstration; it was not a negative one. By that I mean this, at no time was there a demonstration against flying the Panamanian flag at Balboa High School. I saw not one time, not one sign, not one petition; I heard not one speech about flying the Panamanian flag. The students wanted the flag of the United States flying in front of their school. Remember that it had been flying there as long as they had lived. This is what they had wanted. They were reaching a point on about Thursday—because if you are in this business, you began to be able to know what is going on within a school. It was clear to me by Thursday that the solution would be flying the two flags.

OAS Ambassador: Only a few students—not more than 150 out of the 1800 were involved in the flag question; the rest of them attended their classes.

Mr. Speir: This figure of 150, of course, is a maximum figure.

OAS Ambassador: When was the order out—had the flag been flown previous to this time only—this practice of flying the American flag.

Mr. Speir: It had been the practice to fly the American flag for as long as we had had a high school at Balboa or any other site.

OAS Ambassador: We have always been informed that, at Balboa High School, there had always existed absolute discipline on the part of the students with regard to obeying directives, orders, and so forth, from the authorities. However, we have also been informed that, at the particular time in question, there had been noticed a slight drop in this obedience and this discipline, and the initiation of a subversive type movement with regard to the question of a certain small group of students who wished to raise this flag in contravention of the orders that were given, possibly based on the fact that this was the time that orders had been given for the flying of the dual flags in a certain selected number of sites. I want to know if this was true.

Mr. Speir: I'll have to be very sure what the question is. I am flattered by the first part of the question; I accept that and appreciate it. Balboa High School has been noted for its firm discipline because, frankly, I believe in that. One cannot learn in an atmosphere unless there is peace and quiet and dignity. Exactly what is the question now in regard to the second part?

OAS Ambassador: It is true that, at the particular time in question, there was a movement among a certain group of students with regard to the raising of the American flag at the school, taking into account the fact that, at this particular time, the dual flag order was going to be placed into effect—let me rephrase it. They gave the consideration that discipline was very good. It sounds surprising that the number of the students that had disobeyed the orders and decided at this moment to fly the American flag there, and to keep it even against the directions given by you or by the Governor. So, how can you explain that?

Mr. Speir: I see. I'll come to yours in just a minute. If the question is, did a group of students use the flag issue to subvert discipline, then my answer to that is, I do not believe so.

Mr. Martin: Did it subvert discipline on the flag issue?

Governor Fleming: I would like to answer your question. I think the question is, did some students disobey my order. I never gave an order to pull the flag down. The question came up, as to whether I should issue an order to lower the flag. I decided myself I would not do that. I never issued any order that they should lower the flag. What we were trying to do was to work against time. We were working on the parents. We were working on the student leaders. We were working on the people who formed public opinion in the community because it was my opinion then and, frankly, it would be my opinion now that, had I ordered that flag down, I would have greatly aggravated a delicate situation. So, there was no order—there was never any order to those students to take their flag down.

Chairman: Well, the question mostly is, did you notice any feeling or emotionalism, spiritualism, in the students pertaining to the flag issue. There are two things—one is bringing the flag down or bringing the two flags up—was there any emotionalism—were people saying, "Well, we don't want either flag or one flag down" or anything like that?

Mr. Speir: No. As a matter of fact, there was an atmosphere of calm. Remember now,—the directive was issued on December 30th. We returned to school following the Christmas holidays on January 2d; we were in school January 2d, January 3rd, and January 6th. No flag was flown at all. There were no demonstrations. There was no atmosphere of emotionalism. There was no tension. Then there were rumors to the effect that the students would attempt to fly the flag the following day, Tuesday, January 7th. But, I recall on Monday, January 6th, in making my tour of the plant, which was a very large plant, being struck with the idea of how peaceful and how calm the school was. Of 1850 students in school during that

tour, I found exactly one student who was some place where he should not have been. One can feel when the air is charged with emotionalism; definitely, it was not.

Mr. Martin: There were a small number that were determined, and did put up the flag and sat guarding it 24 hours a day—starting when?

Mr. Speir: —starting on January 7th, Tuesday, this is correct.

Governor Fleming: Getting back to this flag issue—in the discussions, which the American Ambassador and I had had with the Panamanian representatives about flying the flag, we agreed that there would be about 15 locations in the Zone where the two flags would be flown. The Panamanian representatives knew where those locations were. We had discussed it with them in general, and I think there was an acquiescence on the part of the Panamanian authorities where the flags would be flown. We were going to fly them at Gatun Locks and Miraflores Locks; on each end of the Canal; at the two Administration buildings; we had one set of flags in each of our major townsites; one at each of the hospitals, there are four hospitals; and one at the two cemeteries. But, initially, there was a total of 15 locations; and then we added 2 more, making 17 locations for the flags.

The American schools and the Latin American schools—because we have two classes of schools in the Zone—we have American schools which we teach in English; and we have Panamanian schools which we teach in Spanish. The majority of the students at the Panamanian schools are, of course, Panamanian citizens who actually live in the Zone, and the American Government runs the schools for them. And the question came up about flying those flags at the schools—what kind of flags we were going to fly at the schools. So, we made the decision that the best thing to do at that time—since there would be a flag in each

townsite very close to the schools, we wouldn't fly one in front of each of the schools.

When this issue came up and the American students raised their flag on the flag pole, I never issued any order to take it down because it was a most emotional situation; it was a very delicate situation. And, it seemed to me, as I said before, that the best thing to do in this particular situation was to work for time. And, in working for time, I was working first with the student group at the Canal Zone College. They were a little bit more mature than the group at the Balboa High School. And I thought—I was working there with the teacher of Government at that College—that, if we could get the boys and girls at the College to agree to ask to put up both flags at the College, we would then have a step forward getting the other students also to ask to put up both flags.

If we could have gotten the students then—the great mass of students, instead of these 150 that Mr. Speir said were behind the putting up of the one flag—if we could get the great mass of people—mass of the students to agree to put up the two flags, then we would have something which would contribute a lot of good will rather than destroying of good will.

We were working through a group at the College. We were also working with the parents' groups. We had talked to selected parents, trying to get word out through them to the children. And we were working through an organization we have called the Civil Councils in the Canal Zone, trying to get them to come along with this thing and turn this situation into something good. Personally, when I went to Washington on Thursday, I was most optimistic that we would have reached a solution. I thought the thing was just about set, and I was optimistic, most optimistic that we were going to get out of this thing and it would be perfectly OK.

OAS Ambassador: Mr. Governor, let me ask you a question. As I understand your words, you stated first that there was no order from you that the flag should be lowered.

Governor Fleming: That's right.

OAS Ambassador: Is it not true that you had come to an agreement—I don't know whether among yourselves or with the Panamanians—on a certain date that it was better not to fly any flag in front of the schools because there were other flags flying nearby on buildings, and it was not necessary, and you hoped to gain time to convince the students and other groups to fly the two flags. Therefore, this is the question I want to ask you—when was that decision or agreement among yourselves or with the Panamanians, that no flags should be flown in front of the schools—what was the date?

Governor Fleming: Oh, that was very early.

Lieutenant Governor Parker: July 20, 1962—that was the date of the agreement.

Governor Fleming: We are talking, Mr. Ambassador, about two different time frames almost a year and a half apart—almost a year apart anyway. When I said the decision was made not to fly the flags at the schools because there were flags in the townsites—the two flags in the townsites—I am talking about something that happened about in July of 1962, because that is when we decided with the Panamanian representatives—sometime between July and—I don't know, I don't remember the dates—it was at least a year ago—where these flags would be flown—the 15 locations I was talking about.

Now, when I said I did not give any order to pull the flag down at the school, I meant that I did not order the flag down after the students put it up on the 7th of January because at that time it seemed to me, if I had ordered those American students to pull their flag down, I would have made a delicate situation most difficult.

OAS Ambassador: Why did the students find it necessary to raise your flag?

Governor Fleming: They were very patriotic and quite emotional about this issue.

OAS Ambassador: Did they find it necessary to raise the flag because they knew it was not going to be raised as usual?

Mr. Martin: I think you have to get the intermediate step here; Governor, of when the flag stopped being flown under your decision of July 1962.

Governor Fleming: Under the decision, as I said, which was reached about a year ago, this flag question, because there were other actions which took place which we couldn't immediately complete in the Zone—we couldn't immediately complete in the Zone—we couldn't immediately complete the agreement which we had reached with our Panamanian colleagues and which had been announced in a joint communique issued by the two governments—I think the date of that joint communique was in January 1963. We were not able to complete that business because of some other actions which were taking place, and Dr. Solis and Dr. Fabrega both knew why we weren't proceeding. However, those other things were all disposed of about 3 months ago and we decided then that we would complete the action on the flags. We would go ahead and put up the other flag poles in the other locations and we would take down the flags in the places where we then had American flags flying and where we would not have them flying after the agreement was completed.

So, sometime in the month of December 1963, I decided the date on which I would then complete this action about the flags. And, involved in that was taking down the flags at the schools where they had previously been flown. And, we then put out a press release dated December 30th, announcing the action which we were going to take to com-

plete the flag agreement with the Republic of Panama, which included taking them down at the schools and announcing where we were going to put them up, and the time schedule on which we would start flying the two flags.

OAS Ambassador: Thank you very much because this is exactly what we wanted to know. So, on the basis of that press release, no flag was supposed to fly in front of the school. So, when the students later decided to raise the flag, you stated that you intended to reason with them about cooperation, but subsequently you had all this trouble and difficulty.

Governor Fleming: I knew very well that, if I ordered that that flag, which the students had raised—if I ordered that that flag be taken down, I would only be able to do it by force. And, I knew that this—in this situation, that that would be the wrong thing to do. So. I was trying to use persuasion and not use force.

OAS Ambassador: We understood very well your motive, I'm sure, Governor. May I ask you one decision. I understood Ambassador Martin to say that, on Monday the 6th, in the morning, the students raised the flag, and that that flag was lowered.

Governor Fleming: It was on Tuesday, the 7th. The flag was raised by the students. It was then lowered, ordered down, and it was taken down on the authority of the man who is what we call the Civil Affairs Director—he works for me. The students put it up again the same day—10 minutes or 15 minutes later the students put it up again. He then telephone me and asked me what to do, and I said, "Leave it up."

OAS Ambassador: Mr. Governor, from the 7th to the 9th, the flag pole was surrounded by a group of students.

Governor Fleming: That's right.

OAS Ambassador: And you were trying to use persuasion at that time in order to convince them to reason and

to come to an agreement and to get them to ask you to fly the two flags. And, in the middle of this kind of persuasion campaign, this incident took place.

Governor Fleming: Yes.

OAS Ambassador: Thank you very much.

OAS Ambassador: In our conversation with the Panamanians, we have received some information about the actions of a policeman in a certain place who raised the American flag unauthorized—I think it was not in Balboa.

Governor Fleming: No, it was in Gamboa. Gamboa is the town in the middle of the Canal, halfway between the Pacific and the Atlantic side. In the discussions which we had with Dr. Solis and Dr. Fabrega we discussed the question of the flags which were flown by private individuals, not officially by the Government. There are in the Zone some American Legion clubs, veterans' clubs, and things like that. And, this flag at Gamboa is a war memorial to the people from Gamboa and from the Canal Zone who were killed in World War II. In the discussions with the Panamanians, I specifically mentioned that flag as being one that we would not change because, obviously, if it was a war memorial, there is a lot of sentiment about that; and that flag would continue to fly without a Panamanian flag with it because it is a memorial. We were going to have another place in Gamboa where the two flags would be flown. In the agreement that we made with the Panamanians, it said that, where the flag was flown officially by the civilian authorities in the Canal Zone on land, then both flags would be flown. This flag actually, in Gamboa, is flown by a private association; it is a memorial association of that town. As I said, in the discussions with the Panamanians, I covered this flag specifically, and it is mentioned in the minutes that we mentioned this particular flag. The policeman—very frank—the policeman in this article which appeared in the newspaper a couple days before—that

policeman it seemed to me may have been seeking publicity. I told the policeman rather emphatically, as emphatically as I could, that I considered his action in going to the newspapers and telling them all about it, completely out of order. We had already arranged—at the time the policeman got the publicity in the newspaper, I had already arranged with the civic people out in Gamboa that they, as private citizens, would put that flag up and down, so it would not be anything officially connected with the Canal Zone, and that would then carry out the discussions about the particular flag which we had in the meetings with Dr. Solis and Dr. Fabrega. I don't know whether they right now remember it specifically. But, after that publicity we had in the paper, I went back and checked on my records of our meetings, and that flag is covered as an exception in those records. That was about last July—July 1962.

OAS Ambassador: Thank you very much. I think it was very clear then that the Panamanians have agreed to that flag particularly. It was a private flag and there was no question about it.

Governor Fleming: To the best of my recollection, I think that at the time Dr. Solis and Dr. Fabrega both knew that that particular flag I was making an exception of, because it is a war memorial.

OAS Ambasssador. Thank you very much.

(The meeting adjourned at 1830 hours.)

SECOND SESSION

El Panama Hilton Hotel, Panama City, Republic of Panama
9:30 a.m., February 15, 1964

Proceedings

Mr. Martin: Mr. Chairman, with your permission, we will continue as we did yesterday with a presentation of a film and slides. We will start out now with General Mabry who was in charge on the Pacific side and whom you met on your trip day before yesterday, and follow up with Colonel Sachse who was in charge on the Atlantic side. Following their presentations we will welcome any questions you have about the operations of the military and we have a witness General Andrew P. O'Meara, the U.S. Commander in Chief of Southern Command, who will be ready to answer questions about activities in either of these two points or anywhere else in the Canal Zone that you may have an interest in. Then I will conclude with a very brief summary.

General Mabry: Gentlemen, I intend to give you a description of the events that took place along the Republic of Panama-Canal Zone boundary on the Pacific side of the Isthmus, that is, Panama City, Balboa, beginning at 7:45 p.m. on Thursday, 9 January 1964, and continuing through 8:00 a.m. on Thursday, 16 January. Following my presentation, Lieutenant Colonel Sachse will describe the action which took place on the Atlantic side of the Isthmus, that is, the Colon and Cristobal area during the same period. In my presentation I shall mention all orders issued by General O'Meara, Commander in Chief, United States Southern Command, which affected military operation on both the Atlantic and the Pacific sides of the Isthmus.

In way of a brief orientation, the border between Panama City and the Canal Zone, Balboa area, is indicated on this map by the heavy green line. Kennedy Avenue, 4th of

July Avenue down to this point. The boundary runs along the curb of the street on the Republic of Panama side of Kennedy Avenue and 4th of July Avenue. Some buildings and areas of which I will mention during the presentation which are within the Canal Zone are the Ancon Foundry, the Freight Terminal and the building adjacent thereto, the Tivoli Guest House, the junction of Gorgas Road and Kennedy Avenue, the limits, which is the junction of Balboa Road and 4th of July Avenue and within the Republic of Panama, the Legislative Palace and Pan American building.

Gentlemen, at 7:45 p.m. on Thursday, 9 January, General O'Meara issued an order to the military forces to be alert for possible movement. This order was based on a conversation General O'Meara had with the Acting Governor of the Canal Zone. The Acting Governor indicated that in view of the demonstrations held at the Balboa High School within the Canal Zone it appeared he may have some difficulty and may be forced to call upon the military for assistance. At 7:59 p.m. General O'Meara assumed control of the Canal Zone and directed U.S. military troops to secure the Canal Zone boundary on the Pacific side and clear rioters from the Canal Zone. This was based upon a late conversation with the Acting Governor of the Canal Zone to the effect that the situation was beyond his control and he requested General O'Meara to assume control of the Canal Zone.

General O'Meara authorized the use of tear gas as maximum force to be used against the rioters.

At 8:00 p.m. General O'Meara directed me to go to the Tivoli Guest House area and evaluate the situation along the border. I arrived at the junction of Gorgas Road-4th of July Avenue stopping short about 300 yards. In that area I observed about 500 rioters who had penetrated the Zone some 100 yards. Five Canal Zone policemen were attempting to hold the rioters back by using tear gas grenades.

I then proceeded to the Tivoli Guest House area. In front of the Tivoli Guest House and on Kennedy Avenue and in the Shaler Triangle there was a crowd that I estimated to be around 1,000. Many of them were in Kennedy Avenue and were throwing rocks and Molotov cocktails over the fence toward the Tivoli Guest House. Three Canal Zone policemen were using tear gas grenades in an attempt to restrain the mob from climbing the fence and setting the Tivoli Guest House on fire.

At 8:35 p.m. a company of troops numbering about 100 transported in two-and-a-half ton trucks arrived at the Tivoli Guest House. The column stopped about here (pointing to the map). The troops dismounted and deployed, took up positions along the fence in front of the Tivoli Guest House. The rioters continued to throw stones and Molotov cocktails over the fence at the troops and toward the Tivoli Guest House. They were dispersed and driven back across 4th of July Avenue by troops using tear gas grenades. I then proceeded to the Ancon Laundry—here it is (pointing to map). Approximately six Canal Zone policemen were behind a temporary barricade which had been erected as a protective barrier in Roosevelt Street adjacent to the Ancon Laundry. Opposite this position and on Street 24 in this area (pointing to map) there was a crowd which I estimate to be around 1,000 to 1,500. Some were down the side streets. Along this area, which is a fence enclosing the freight terminal and freight yard, there were approximately 500 rioters up against this fence. They were throwing Molotov cocktails and rocks over the fence in an attempt to hit the Canal Zone policemen who were in this loading shed. Molotov cocktails were being thrown in this direction (pointing to freight terminal and loading shed on map). Canal Zone firemen were extinguishing fires as they were set. The fire truck was about here at this corner of the building. The mob in this area would surge forward and on occasion Canal Zone policemen behind this

temporary protective barrier would discharge their pistols over the heads of the crowd and on occasion fire into the ground in order to hold the crowd back.

I secured 15 U.S. soldiers, eventually, from the 110 which had arrived at the Tivoli Guest House and began to progressively relieve the Canal Zone policemen, who were behind this protective barrier and those who were protecting the freight terminal. All told in this area there were about ten Canal Zone policemen.

At 9:20 p.m., while I was still in this general area, General O'Meara reported by radio that he had received a report that approximately 1,000 rioters had entered the Canal Zone boundary at the junction of Balboa Road and 4th of July Avenue, in this area (pointing to map). He requested that I secure some troops and proceed to that area in order to remove the rioters from the Zone. About this time three armored Personnel Carriers, containing six soldiers each, arrived in the Ancon Laundry area. I immediately got the Lieutenant in charge and directed that he follow my vehicle to this area (pointing to map). However, at about this same time a Canal Zone policeman reported that Judge Crowe's house was under attack. Judge Crowe's house is right here (point to the map). So I decided to go by Judge Crowe's house first on the way to the junction of Balboa Road and 4th of July Avenue. As I reached Judge Crowe's house I parked the three personnel carriers, with the six soldiers in each making a total of about 18, in the rear of the house and went around to the front yard. I contacted a policeman in the yard, telling him that I had 18 soldiers in armored Personnel Carriers in the rear of Judge Crowe's house and that if additional assistance was required to protect the Judge's house the Lieutenant would employ troops in riot formation and use tear gas to assist. The policeman stated that about 15 to 20 rioters had come across 4th of July Avenue and had thrown Molotov cocktails over the fence. I saw some of

these Molotov cocktails still burning. Then I went down to the junction of Balboa Road and stopped short of the junction it makes with 4th of July Avenue. I stopped about 500 yards short of the junction. When I walked down Balboa Road toward 4th of July Avenue I then met Captain Wall who is a police captain of the Canal Zone police. He had with him about 18 policemen. They were attempting to hold back a crowd I estimated to be around 1,000. Earlier the mob had penetrated the Zone approximately 400 yards. This was confirmed, by a senior military officer who earlier had observed this from a position on Ancon Hill, about here (point to the map). It was evident to me from the rocks and so forth in the street in this location that the rioters had at one time penetrated up to 400 yards. When I arrived, however, they were approximately 150 to 200 yards in the Zone. I conferred with Captain Wall. During the conversation three rioters broke a commercial gas line about 100 yards, 150 yards up Balboa Road, and set fire to the leaking gas. This caused me some concern because I was afraid that the tank containing the gas would explode. The Fire Chief of the Canal Zone Police Department was with Captain Wall so I asked the Fire Chief to turn off this gas as quickly as possible.

At 10:15 p.m. approximately 50 U.S. soldiers in 2½-ton trucks arrived on the scene. They stopped short about where I had stopped and dismounted, and I directed the first platoon, consisting of about 30 soldiers, to assume a riot control formation, move down Balboa Road and remove the rioters from the Zone. These soldiers moved down the road followed later by the second platoon of about 40 U.S. soldiers. When they had pushed the rioters across 4th of July Avenue, and no soldier went further than the middle of the street of 4th of July Avenue, the soldiers crouched down. At this time they were subjected to a deluge of rocks, bottles and Molotov cocktails. One soldier received a wound in the eye from a rock which caused severe lacera-

tions on the side of the nose, the cheekbone, and the eyebrow. Another soldier received a cut over the lip which I later determined needed four stitches to close it. Only tear gas, no firing was used to disperse the rioters.

These rioters in this area were removed from the Zone at approximately 10:25 p.m. I then returned to the military headquarters, Quarry Heights and reported to General O'Meara. At this time I learned that troops in the vicinity of the Tivoli Guest House had begun receiving sniper fire from individuals positioned in the vicinity of the Legislative Palace and the Pan American building. Colonel Trahan, Chief of Staff of the U.S. Army Forces, Southern Command, requested permission to return fire. General O'Meara directed Colonel Trahan to phone the Guardia Nacional and ask that they do something about stopping the sniper fire. General O'Meara denied permission to return fire of the snipers. The request was delivered to the Guardia Nacional by a U.S. Army liaison officer in addition to the telephone call made by Colonel Trahan.

At 10:45 p.m. I returned to the Tivoli Guest House in view of the sniper fire in that area. When I arrived about 25 rioters were along the 4th of July Avenue in front of the Tivoli Guest House. An additional 25 to 30 rioters had commenced breaking store windows in shops along 4th of July Avenue in the Republic of Panama. They were using two-by-four timbers to break windows and appeared to be looting and destroying the contents of the stores along 4th of July Avenue. While crouched on the ground in the vicinity of Tivoli Guest House, at about this position (pointing to map), I came under sniper fire from a position I guessed to be in the vicinity of the Legislative Palace. Later I actually saw a sniper who was behind a wall adjacent to the Legislative Palace. He would raise up, fire, and duck back down behind the wall. While I crouched on the ground in this location a Sergeant was hit in the left

shoulder by a sniper bullet. He was about six yards from where I was.

At 10:50 p.m. troops continued to receive sniper fire in the vicinity of the Tivoli Guest House. Based on another request from Colonel Trahan, General O'Meara authorized directed and controlled shotgun fire against identified snipers in this locale. Shot was limited to number four and seven-and-a-half bird shot. Again I want to emphasize it was closely supervised. An individual would be designated to use the shotgun in an attempt to deter the sniper fire. I observed this fire while in the area and I also assured myself that it was not promiscuous firing. I also determined rather quickly that the shotgun fire would be ineffective due to the distance involved, or distance between the position of the firer and the position of the sniper in the vicinity of the Legislative Palace. At no time was shotgun fire used near any group of individuals. I had hoped that this shotgun fire would deter the sniper activity.

At 10:55 p.m. the sniper fire from the Republic of Panama into the Canal Zone had wounded one American civilian and two soldiers.

At 11:05 p.m. General O'Meara approved a concept of operation for the following morning which was if the situation were stabilized troops along the border would be withdrawn to reserve positions. Wire barriers would be removed and only two Military Policemen would man the check points at the points of entry into the Canal Zone from the Republic of Panama. This was to be accomplished prior to 5:00 a.m.

At 11:15 p.m. General O'Meara phoned Foreign Minister Solis and informed him that U.S. troops were being wounded by sniper fire coming from the Republic of Panama and that under the circumstances we had to return the sniper fire but if the Guardia Nacional could stop the sniper fire he would cause his troops to stop the shotgun fire.

Minister Solis said that he would see that the Guardia Nacional were given immediate orders to seize all snipers and to stop all sniper firing. Based on this commitment, General O'Meara directed the shotgun firing by U.S. soldiers to cease. His order was complied with immediately.

At 11:30 p.m. we received a report that in David, Republic of Panama, rioting had started about 9:00 p.m. Americans living in that area were forced to flee the country and enter Costa Rica. Anti-American demonstrations also took place at Rio Hato and Chitre.

At 12:20 a.m. on Friday, 10 January 1964, two soldiers in the vicinity of the Tivoli Guest House were wounded by sniper fire coming from the Republic of Panama. This made a total of four wounded, one by sniper fire coming from the Legislative Palace and the Pan American building and that general vicinity. Accordingly, Colonel Trahan requested General O'Meara to authorize the use of .30 caliber ball ammunition against snipers. General O'Meara authorized the use of ball ammunition by trained marksmen for carefully selected and directed controlled counter-sniper fire. At the Tivoli Guest House I assured myself that only a well trained marksman was selected to accomplish this task.

At 12:30 a.m. troops at the Tivoli Guest House continued to receive sniper fire, and began receiving automatic weapons firing coming from the Legislative Palace. A fifth soldier was seriously wounded in the head and a sixth soldier was also seriously wounded in the body. The tactics used by personnel manning the automatic weapons in the Legislative Palace were briefly as follows: One individual was on top of the Legislative Palace and he appeared to have a weapon similar to the old German submachine gun. It had a very high cyclic rate. He would come up over a wall, strafe the area, then duck down behind the wall. A minute or two later another individual with a different

type automatic weapon, which I estimated to be about .45 caliber, similar to a submachine gun, would open a window on about the third or second floor from the top of the building, spray the area and duck back in. Later he would appear on another floor and do the same thing. Intermittently between these bursts of automatic weapons fire individual snipers, one firing what appeared to me to be a .22 caliber, was on top of the Legislative Palace. Another weapon appeared to be around .30 caliber, high-power hunting rifle, was being used from the top of the Legislative Palace. Down on the ground there appeared to be three or four individuals shooting pistols on occasion. They would fire a couple rounds and disappear.

General O'Meara telephoned Lieutenant Boyd of the Guardia Nacional at 1:10 a.m. General O'Meara informed Lieutenant Boyd that he would have me call at 5:00 a.m. and give him, Boyd, a decision as to whether the Canal Zone border would be opened to peaceful traffic commencing at about 5:00 or 6:00 a.m. the morning of the 10th.

At 5:48 a.m. I received a request from Commander, U.S. Army Forces Southern Command, to permit a check point to be placed on the Colon Corridor on the Atlantic side. The rioters were moving toward a civilian housing area known as Rainbow City and were threatening the safety of the civilians in that area. In view of the situation, I authorized a check point to be established on the Colon Corridor. Colonel Sachse in the presentation to follow mine will cover this in more detail.

At 5:00 a.m. the morning of the 10th I called Lieutenant Boyd at Guardia Nacional Headquarters and asked if Colonel Vallarino, Commander of Guardia Nacional, believed the situation in Panama City was sufficiently under control to permit traffic to enter the Canal Zone. Lieutenant Boyd stated that the Guardia Nacional believed that by 6:00 a.m. they would have the situation well enough in hand

so that they could control the situation in Panama City. I informed Lieutenant Boyd that the Canal Zone border would be open to peaceful traffic, both on foot and in vehicles. I requested active support from the Guardia Nacional and received assurance that such cooperation would be extended. I then informed the U.S. Army Commander to permit peaceful individuals and vehicular traffic to enter the Zone effective at 6:00 a.m. At 6:00 a.m. all entry points into the Canal Zone on the Pacific side were opened to peaceful traffic. Only two Military Police were at each check point and a brief examination only was given to individuals desiring to enter the Zone.

At 6:10 a.m. crowds began to form in the Shaler Triangle and along Kennedy Avenue in the vicinity of the Pan American building, the burned out Pan American building. Initially the crowd numbered about 500 and then began to increase.

At 8:00 a.m. demonstrators climbed through the fence in the vicinity of the Tivoli Guest House and came in the Zone for a distance of about 30 or 40 yards. About 30 U.S. troops using riot control formation and employing tear gas dispersed them.

At 11:45 a.m. President Chiari requested U.S. troops cease counter-sniper fire to permit the Guardia Nacional to take action against the snipers. General O'Meara ordered the counter-sniper fire from the Tivoli Guest House to stop. This order was complied with immediately. So all sniper fire ceased. The counter-sniper fire was delivered by trained marksmen stationed in the Tivoli Guest House.

General O'Meara: You said the sniper fire ceased. You mean it was the counter-sniper fire that was ceased?

General Mabry: Yes, sir. I want to be clear on this. We stopped the counter-sniper fire which was being delivered from the Tivoli Guest House. The sniper fire continued from the Republic of Panama.

At 12:20 p.m. about 800 Panamanians gathered at the Shaler Triangle and cries for a march on the Zone were heard but no march was attempted. During the morning of Saturday, 11 January about 300 Panamanians threw stones at houses along Gaviland Road which is in this area. The housing area is here (pointing to map). U.S. troops, about 20 in number, dispersed these Panamanians and removed them from the Zone by using tear gas grenades. During the afternoon of 11 January on three separate occasions, groups of Panamanians varying in number from 300 to 350 entered the Canal Zone in the vicinity of the Guest House, Tivoli Guest House. Approximately 40 U.S. troops on these three different occasions used riot control formations and tear gas to chase the Panamanians from the Zone. These three penetrations at different times in the afternoon occurred in this area (pointing to map). Also approximately 200 Panamanians entered the Canal Zone at the junction of Gorgas Road and 4th of July Avenue. They penetrated about 30 yards and 33 U.S. soldiers were employed in riot control formation and used tear gas to drive them from the Zone. Starting at 8:00 p.m. and continuing through the night of 11 January automatic weapons fire and rifle fire was directed at the Tivoli Guest House and nearby buildings in the Canal Zone. The fire came from the Legislative Palace area and the Pan American building area within the Republic of Panama. Approximately 400 rounds were fired into the Zone during this period.

General O'Meara: George, one thing you didn't say, after the President's request the fire did not immediately stop. Sometime afterwards it was stopped by Guardia Nacional who had gone in there.

General Mabry: About this time the sniper fire did die down and cease for about two or three hours. However, it commenced again at about 8:00 p.m. and continued to about 2:00 a.m. in the morning. They continued to fire

and this is when I mentioned about 400 rounds came into the Zone in this general area.

During the daylight hours of Sunday, 12 January, everything was relatively quiet. However, at 8:00 p.m. automatic weapons and rifle fire was again delivered into the Canal Zone from the Legislative Palace and other buildings in that general vicinity. From 8:00 p.m. on the 12th of January until 4:00 p.m. on the 13th, approximately 800 rounds were fired into the Zone from the Republic of Panama. During Monday the 13th, Tuesday the 14th and Wednesday the 15th of January everything was relatively quiet. Panamanian workers entered the Zone and busses operated normally.

At 8:00 a.m. on Thursday, 16 January, General O'Meara relinquished control of the Canal Zone to the Governor.

Casualties suffered were as follows: The U.S. military personnel killed by rifle fire or pistol fire, 3. Wounded by fire or pistol fire, 24. Lacerations and abrasions suffered from rocks, glass bottles and clubs, 158. U.S. civilians wounded by rifle or pistol fire, 3. Lacerations, abrasions, fractures, 20. Non-U.S. citizens wounded by rifle or pistol fire, 2. Abrasions, lacerations, fractures, 3. Total casualties all categories, 213.

We have a short film clip with some scenes which I believe you might be interested in. It's about eight minutes long.

Molotov cocktails were thrown at night as well as in the daytime. A shot of the Pan American building. Some damaged cars within the Canal Zone. A view of the Pan American building the following morning. Mobs or parades formed throughout the day. This is a group in the vicinity of the Pan American building. Defacing of the monument in Shaler Triangle. The American flag pole supporting the American flag was torn down and replaced by this Pana-

manian flag. Cars being turned over using this technique. That car was in the Canal Zone. This American flag is being torn and bits of it are being thrown into the fire. The Panamanian flag was affixed to the top of this light pole in the Canal Zone.

Ambassador Martin: What day is this?

General Mabry: This is the 10th of January, the first day following. This mob entered the Zone, was rejected by U.S. troops using tear gas grenades.

General O'Meara: They were simply moved as far as 4th of July Avenue. Fourth of July Avenue, it's part of the Zone but we did not attempt to move them once they reached 4th of July Avenue.

General Mabry: I call your attention to the distance the troops are from 4th of July Avenue. They are not in close contact with the crowd. Troops are beginning to erect a wire barrier across this entrance which is well within the Zone. Many rocks were thrown and proved to be an effective weapon. Some shots of the snipers firing. The Tivoli Guest House where most of this firing was directed. Preparations inside the Tivoli Guest House were protection against sniper fire. Selected U.S. soldier returning counter-sniper fire. This is an officer attempting to knock out the bannisters so that he could get a better view, try to determine the exact location of the sniper fire. This officer was hit by sniper fire while he was attempting to knock out the bannister. He was dragged to a safer place and given First Aid.

Ambassador Martin: A shoulder wound?

General Mabry: Yes, sir. That concludes my portion.

Ambassador Martin: Colonel Sachse?

Colonel Sachse: Committee members, gentlemen, I was the local ground Commander in the Cristobal, Canal Zone

area. I would like to brief you on what took place in this section.

At 8:50 p.m. on Thursday, the 9th of January, my unit, consisting of approximately 700 troops, was alerted. At 9:25 p.m. my battalion consisting of approximately 700 troops was ready for movement. At this time I issued my unit, consisting of 700 troops, riot control devices. I issued ammunition to one of my units, consisting of 135 troops. The ammunition consisted of 16 rounds of M-1 ammunition, one clip of .45 ammunition, 50 rounds of carbine ammunition to the platoon leader only and 5 rounds of shotgun ammunition per individual armed with a shotgun. This was in a unit I intended to move first.

I issued only riot control agents to the other two units in my battalion. They had no ammunition whatsoever at this time, not even shotgun ammunition. I would like to point out that machine guns were never taken to Cristobal, Canal Zone. They remained on the post at Fort Davis.

At 9:50 p.m., 9 January, I received a message from higher headquarters to move my unit consisting of 700 troops from Fort Davis, located in this area, to Cristobal, Canal Zone, Pier 9, which is located on the larger map—this sector right here (pointing to map). I led my battalion to Cristobal, Canal Zone, arriving there approximately 10:15 p.m. The message I received was to clear the rioters from the Canal Zone, seal the border between the Canal Zone and the Republic of Panama.

Arriving at Pier 9, Cristobal, Canal Zone, I immediately helped my unit in place at Pier 9 and made a quick reconnaissance. I moved to the front of my jeep in the vicinity of the Commissary building, made a swing around through the street by the Masonic building, looked at the YMCA to see what was in this sector. At that time I saw an estimated, probably about 400 rioters in this vicinity. They were breaking glass out of the Commissary building,

Canal Zone. They were breaking glass in the lower windows in the Masonic Temple, Canal Zone, and also breaking windows in the YMCA and the doors to the YMCA in the Canal Zone. I noticed the rioters after breaking the windows were going through the windows, some of them returning back through the windows with things in their arms, and it appeared to me that they were looting.

I quickly returned to my unit located at Pier 9 and ordered my lead unit, consisting of 135 troops, to move out and follow me. I took this unit to this control point number one, by the Commissary building at Eleventh and Front Street, and placed them in a riot formation, which is a standard formation for our Army troops—it's standard training—with orders to move down the right side of Eleventh Street, drop off personnel from the rear of the column, seal the streets as they went. A company moved out and at this time I left my Executive Officer, who is my assistant, to stay with "A" Company.

I returned, gave "B" Company, consisting of approximately 140 men, the mission of clearing the area between 12th and 13th Streets and 14th Street in this sector right in here (pointing at map). "B" Company moved out and arrived in formation in the same method. The number of rioters in the "B" Company area was practically none. Most all of the rioters were operating in the three buildings located along the border in the Canal Zone which was the Commissary building, the Masonic Temple and the YMCA where mass destruction was going on. After starting Company "B", consisting of approximately 140 men, on their mission I returned to see what was taking place with the other unit.

This unit had moved down the right side of 11th Street and sealed the entrance by dropping off personnel at Fort Street and 11th Street at this control point (pointing to map). "A" Company turned right on Balboa Avenue in

this area (pointing to map) which is between the Masonic Temple and the Commissary building and the YMCA. At the rear of the YMCA building a group of Panamanians located on Balboa Avenue in the Canal Zone, approximately 23 individuals, were standing with a Panamanian flag. As the troops approached they were ordered to move from the Canal Zone, both the Canal Zone Police Captain and my Executive Officer.

The Panamanians would not leave and as the troops got close to them in their riot formation some of the group decided to try to take the weapons away from the soldiers. They grabbed the bayonets and tried to yank the rifles from the troops. In doing this several of the Panamanians in this group were cut with the bayonets, to what extent I do not know. The unit moved on down the street, making contact with "B" Company, approximately 140 personnel in this area, and then moved back towards the Masonic building back up the street.

As they passed by the Masonic building to go around to the front of it on the corner of 11th and Bolivar Street about 15 Panamanians jumped out of the second story windows of the Masonic building onto the formation of troops, right in the middle of them. Some of these people had lead pipes. They had sticks, they had rocks, and they jumped into the middle of the troops. They started to grab rifles and swinging lead pipes. A scuffle started in this vicinity and again some of the Panamanians were cut but to what extent we do not know. The Panamanians left the area at this point.

At this time we had the Zone around the buildings, and we had the intersections also cleared off, sealed off. As this was taking place the troops were moving down the right side of 11th Street. As they were moving down this street, the Panamanians were throwing rocks, sticks, bottles, anything that they had they were throwing at the troops. As

the troops stood on the border around the Canal Zone, Panamanians stepped up their attacks of sticks, rocks, and we had a number of people injured.

Then sniper fire started. We had one man wounded in this unit. This was around the Masonic building. We realized then, when this man was wounded, that the sniper fire had started. We started moving troops for cover off the border. We moved some back to the rear of the Commissary building. We moved some inside of the Commissary building. The same happened for the YMCA and the Masonic building. The sniper fire became rather heavy before midnight and the area to the rear of the Masonic building, Commissary and YMCA became a no-man's land of sniper fire. In fact, it was so thick that it was dangerous to even try to work your way to the Masonic building to check on the troops.

On the morning of the 10th my first man was killed by sniper fire. This was at about 2:30 a.m. At 5:30 that morning I had had 3 soldiers killed and I had had 9 individuals wounded and we had still not fired a shot at the rioters that were shooting at us from the Republic of Panama.

During this period of time, the early morning hours of the 10th, I dispatched a force consisting of about 35 individuals to the France Field-Coco Solo area with the mission of protecting property and lives. This force patrolled by jeep from France Field located in this area (pointing to map) down to the Trans-Isthmus Highway and out to the Coco Solo Hospital. This patrol stayed in effect during the 10th. We had had reports that there was to be trouble in the vicinity of the Coco Solo Hospital and this force was sent to that location to protect life and property there. Also I dispatched a force of about 50 men to Bolivar Avenue to put in a check point to check for rioters coming through with weapons or ammunition. This was called Check Point

1. I had about 50 personnel at this check point. At this check point we had sandbags to protect our troops from sniper fire. Also a strand of barb wire across the road. During the early morning hours of the 10th the sniper fire throughout the area was quite heavy. Molotov cocktails in this area coming from the crowd were quite heavy in the early morning hours of the 10th. It was estimated that on Boliver Street, in this section facing the Masonic building and on 11th Street facing the Masonic building, there were approximately 2-3,000 Panamanians in the area who were being pushed by unknown personnel using loudspeakers. The best we could tell, the people on the loudspeaker trucks were trying to build them up and agitate the crowd to the point that they would come back into the Canal Zone. They did come down close to the Masonic building in the early morning hours of the 10th. We used riot control agents to keep the crowd back.

General O'Meara: Instead of saying riot control agents, what you were using specifically was tear gas?

Colonel Sachse: This is correct, sir, tear gas. I might bring out at this point—the early morning hours of the 10th tear gas was the only weapon our troops had used to keep the crowd back across the border once we had cleared the area.

During the late morning hours of 10 January we were still receiving heavy sniper fire. The YMCA building was on fire from Molotov cocktails being thrown from the Republic of Panama side into the front of it. We were unable to protect it due to the fact that it is set on the border between the Canal Zone and the Republic of Panama. Therefore we practically lost most of this building by Molotov cocktails. There were two cars burned around 11:05 a.m. the morning of the 10th in the vicinity of the Masonic building on the Bolivar and 11th Street intersection. Crowds of 100 to 200 were operating in the vicinity of

Front Street and trying to burn what was known as the old fire station building right across from the Commissary building in the Canal Zone, using Molotov cocktails.

I had one small unit in the building consisting of about 20 men to protect it. In the afternoon hours on 10 January we still received heavy sniper fire. Crowds of from 300 to 600 were operating up and down the streets approaching the YMCA and the Masonic building, with a small group operating in the Fire Station building.

On 11 January, Saturday, I received a call that there was trouble to be expected at Coco Solo Hospital. I personally got in a chopper and visited Coco Solo Hospital and added strength to the protection of this facility. At this time I placed 20 personnel in the vicinity of Coco Solo Hospital to protect property and life. From 12:01 a.m. on 11 January to 1:00 p.m. our front in this sector was relatively quiet except for Molotov cocktails being thrown at the Masonic building.

From 1:00 p.m. to 6:00 p.m. on 11 January the sniper fire stepped up again in the sectors from the Commissary to the Masonic Temple and YMCA. It was quite heavy. The Commissary building was set on fire during this period of time, when the sniper fire stepped up. There had been so many Molotov cocktails thrown through the windows of the Commissary building that the floor was just covered with oil and gasoline or kerosene, whichever they were using. And they got in a lit Molotov cocktail on this and it just went up all at once. The firemen who were there with us were unable to control the fire in this building so the Commissary burned in the afternoon of 11 January which was Saturday. Crowds of from 300 to 1,500 were operating in the area around our front on 11th Street, Bolivar Avenue and a few on Front Street. Again they were approaching the border, throwing sticks, rocks, Molotov cocktails at the troops positions trying to set buildings on fire.

From 6:00 p.m. to 12:00 p.m. on 11 January crowds up to 1,500 operated to the front of the Masonic building on 11th Street and Bolivar Avenue approaching this intersection (pointing to map). As the crowds moved to the border again we used tear gas to disperse them and push them back. The sniper fire had become so heavy at this time, and because of the wounded personnel that I had had, I requested of higher headquarters to let me fire at the snipers with shotguns fired by selected personnel.

On 11 January at 2:45 p.m. the request was approved and I did start to fire shotguns at this time at the snipers. It seemed to slow up the sniper fire at this particular time but it did not stop it completely.

General O'Meara: I want to make the point that this was the first time your men had ever used their weapons, is this correct?

Colonel Sachse: That is correct, sir.

General O'Meara: No weapons had been fired by any of your troops until 2:45 p.m. Saturday, the 11th?

Colonel Sachse: That is correct, sir. This was the first time that ammunition had been fired at any Panamanians in my area of operations which was Cristobal, Canal Zone.

On the morning of 12 January, which was Sunday, at 1:30 a.m. we were still receiving heavy sniper fire and Molotov cocktails again on the Masonic building coming from the bars located across the street, that is, about 50 feet or 75 feet away from the Masonic building.

From 2:00 a.m. until 11:00 a.m. we did not receive very much sniper fire on 12 January. From 11:00 a.m. until 10:00 p.m. 12 January, again we received heavy sniper fire. Molotov cocktails were quite heavy at the Masonic building. The second floor of the Masonic building was set on fire at this time. The soldiers inside of the Masonic building and some firemen put the fire out. Two men during this

period were wounded in the Masonic building by sniper fire. One was wounded in the arm; one was wounded in the shoulder. We had a very hard time getting these two wounded people out of the building. We had to build up a truck with sandbags for protection to get to this building which is up at the corner of our sector because of the cross sniper fire coming into this area—very dangerous. We did build up a truck with sandbags and moved it in and got the two wounded men out of the Masonic building.

At 4:20 a.m. on Monday, January 13, the Guardia Nacional moved into this area in the early morning hours by truck and started to search all buildings from the top to the bottom all the way around our front. Some were armed with rifles; some were armed with pistols and were well fixed for the job. After they had shaken these buildings down we had no more trouble from sniper fire in the Cristobal area.

General O'Meara: We had no more trouble after the Guardia Nacional shook those buildings down?

Colonel Sachse: That is correct, sir. After the Guardia Nacional moved into this area around 4:20 a.m. in the morning they shook down the buildings to our front in the Republic of Panama sector from top to bottom. I personally watched them go into the buildings, go to the top and shake them down good. After that there was not another sniper shot fired at our troops located across the street in Cristobal, Canal Zone.

Now at this time I would like to back up to one point I saved until the end. This concerns two other check points, which were known as the Colon Corridor check points. These were authorized by higher headquarters. Check Point Number 2, as we called it, we put in at this location (pointing to map) right across from Check Point number 1, and Check Point Number 3, which was located—I can show you on this map—at the other end of the corridor at the

intersection of Randolph and the Trans-Isthmus Highway. This black line as you see on the map is the road coming through the Canal Zone and rejoining the highway. We requested permission from higher headquarters on the morning of 10 January at 5:30 a.m. to place a check point at each end of this area in order to insure the protection of the people of Rainbow City. Also to check for weapons and ammunition that might come back in this area and get into our rear (pointing to map). Before I made this request I personally checked with the Panamanian officials in Colon and requested that they place a check point on the Colon Corridor to check these people in order to work with us on Check Point 1. This request was denied, for what reason I do not know. I was just told that they could not place a check point at that location.

That is when I requested from higher headquarters to place a check point at this location. This was to be known as Check Point number 2. Another check point was placed at the other end of the Colon Corridor at the intersection of Randolph Road and the Trans-Isthmus Highway. This was to be known as Check Point number 3.

Now in between these two check points the Panamanian Government had the road closed before I put in the check points. They had closed it in early December to effect repairs. They had placed four 55-gallon oil drums across each end of this road. They had 2" by 10" planks on top of the barrels and this was to keep vehicular traffic from going through here.

I was approached by the then Minister of Public Works, Mr. Bazan, Check Point Number 1, and asked if vehicles or traffic could continue going through the Canal Zone using this road (pointing to map) to rejoin the Trans-Isthmus Highway at this location, Check Point Number 3. I told him that we were not turning any vehicles back at the check points, that we were strictly looking for weapons and ammunition and then letting them go through. I told

him I was more than happy to keep his traffic coming through the Canal Zone here to here and then rejoining the Trans-Isthmus Highway. He was very happy about it and then he left.

General O'Meara: Did he tell you what the purpose of those barricades were, when they had them put up?

Colonel Sachse: The barricades were put up on both ends, were put up around 4 December, three to four weeks before the riots started, and that was for the purpose of repairing the Colon Corridor in this sector only. That was the only purpose they were there for, but the traffic was blocked. Our Check Point number 2 and Check Point number 3 were checking only foot traffic. The barrels remaining there during our operation but we had check points at these two locations. The Panamanian Government never removed the barrels. Their vehicles continued to come through the Canal Zone check point. We had one other place that I would not classify as a check point and that was in the vicinity of the Coco Solo Hospital. We had gotten word that a mob of 200, approximately 200 Panamanians, was approaching the Coco Solo Hospital and it was heavily loaded with the idea of violence. I immediately got in a chopper from my Command Post at Cristobal and went to just the other side of the Coco Solo Hospital located right about here (point at map) about 200 yards below and at that location I landed and noticed an individual standing on the road. It so happened this individual was a lieutenant of the Guardia Nacional. I approached him and he was worried about the trouble in this area so we jointly put in a temporary check point at this location to turn this mob back or to screen the ones that he felt were safe and let them through. The search that was made of the automobiles in this vicinity was done by the Guardia Nacional lieutenant while I stood by near the hospital with a force of about 35 personnel and watched.

Ambassador Martin: How long?

Colonel Sachse: That check point stayed in for about three hours until we were satisfied that the mob had either turned back or that he had screened a certain number of them, let them go in Colon. The ones that were turned back he personally turned back himself; I backed him up on it. Getlemen, that—

General O'Meara: Before you sandbagged the truck in order to evacuate casualties from the Masonic Temple you made another attempt with a military ambulance I believe, didn't you?

Colonel Sachse: Yes, sir.

General O'Meara: Tell about that.

Colonel Sachse: Before I sandbagged the truck to try to get the wounded out of the Masonic Temple I sent for a one-and-a-quarter ton ambulance which had the ambulance cross painted on it on both sides, the kind that we use within the Army, our small troop ambulance, to go to the Masonic Temple building to pick up these two wounded people. Well, as they approached the Masonic building one of the medics was shot that was in the ambulance, shot in the ambulance.

General O'Meara: It had the red cross painted on it?

Colonel Sachse: That is correct, sir, it did. It had the red cross painted on it. The driver quickly turned the ambulance around and got out of the area and sent this man who was shot in the knee, just below the knee, right in here, back to the aid station and then we proceeded to sandbag the truck and move it into that area.

Also we used quite a number of sandbags in that area. We used sandbags on top of the Masonic Temple, on the top floor which a number of you visited while you were on the Atlantic side. We put them up against the wall for protection from both sniper fire and Molotov cocktails. We used sandbags in the parking lot to the rear of the YMCA

in order to protect the troops who had to be outside. We also used sandbags in this big open area on this side, where I had two men killed before we put in the sandbags. One was killed at this control point on the corner and another one was killed back about 150 yards in the rear of the border by a stray round that came in. We used in the neighborhood of about 5,000 sandbags in this area to keep the troops protected.

Ambassador Martin: Thank you. I think that concludes our presentation, Mr. Chairman, of the military operations. Do you have any questions? General O'Meara will be happy to answer them.

Chairman Plate: We would like to know how many casualties you had.

Colonel Sachse: My casualty list, sir, I had 3 personnel killed by gunshot wounds. I had 15 personnel wounded by gunshot wounds. That gave me a total of 18 either wounded or killed by gunshot wounds. Then I had 83 who were injured by rocks, Molotov cocktails or sticks or something that was thrown at them while they were on the front. These casualties consisted of cuts on the face, arm cuts, in some way or another, either rocks or glass flying through the air. They were rather minor but they still required medical attention. Does that answer your question?

Chairman Plate: Yes, sir.

Ambassador Martin: Any other questions?

Ambassador Marinho: (By Interpreter) Has any American military airplane entered the Panamanian air space while the incident was taking place?

Ambassador Martin: Do you want to talk about the airplanes we had flying the first day?

General O'Meara: Yes. When I assumed responsibility in the Zone at the Lieutenant Governor's request I had a

proclamation issued calling on all persons who did not live or work or go to school in the Zone—see, we had students who lived in the Zone so that they can go to school in some cases—to leave the Zone immediately. Then I had a small airplane, a light airplane with a loudspeaker on it get up and make this announcement both in English and in Spanish. And when this airplane first appeared and made the announcement in Spanish it was of some assistance in clearing the Zone because a number of people, the Panamanians, the rioters who were in the Zone, withdrew. Unfortunately only momentarily.

Ambassador Martin: This was a small, two-seat airplane, about like a Piper Cub with a loudspeaker system on it.

General O'Meara: Due to the urgings that they received in some cases or perhaps for other reasons, they surged back into the Zone again. This was before the troops got there and when only the police were there, but it is also one reason that where there had been deep penetration of the Zone at the Ancon Laundry, for instance, and at the freight stations. They did withdraw, and as General Mabry told you there were large numbers in the Zone there, but they were not as far forward as the point at which they had burned some cars and where they had broken windows in the Ancon Laundry. The earlier time the police were able to move forward and the rioters never penetrated quite that deeply again at that point.

Representative: Did that plane ever fly over the Republic of Panama?

General O'Meara: To my knowledge it did not. It flew along the boundary. Now whether in making a turn it might have crossed over the boundary I can't say. But the street was lighted and I think it did not fly over the boundary.

Ambassador Marinho: (By Interpreter) I have another question. I was informed that the American forces occupied four places in the Republic of Panama, and if so, for how long?

General O'Meara: We occupied no places in the Republic of Panama. The checkpoint was established—

Ambassador Martin: Did you say the Republic of Panama?

Ambassador Marinho: Panama City.

General O'Meara: No. Absolutely no place in Panama City. At no point did any troops cross. You see, all of 4th of July Avenue is part of the Zone up to the curbing, up to the sidewalk on the far side. At no time did the troops cross 4th of July Avenue or Kennedy Avenue, or the police before the troops got there. To the best of my knowledge I am sure this is true too because the police were all deep within the Zone until the troops pushed them out. In fact, as you saw in the pictures we did not try to clear the mobs off 4th of July Avenue even though this is on Shaler Triangle, even though this is a part of the Zone. We made no attempt to clear them, not in the interests of establishing a legal principle, but of using a minimum of force on this side of 4th of July Avenue. On our side there is some sort of fencing and part of the distance there is a wall, so that this was a convenient place where we could restrain them if they did come over the wall. They were limited to shooting at us or throwing things at us. Once they got over the wall, inside it, then our civilian housing area, the buildings, were immediately available to their incendiary acts and it made the area very difficult to protect. As long as we had them on the other side, we could hope to restrain their Molotov cocktails with the fire department. So I felt it was prudent never to try to make any move against them as long as they stayed on 4th of July Avenue.

Ambassador Martin: I would like to add that I have not heard in my stay here a suggestion that we had entered Panamanian territory in the Panama City area and consequently our presentation has not dealt with that problem at all.

General O'Meara: This did not occur.

Ambassador Marinho: Thank you. I have another. (By Interpreter) What about the tanks? It is not very clear. What kind of vehicles were these tanks?

General O'Meara: Do you have some pictures there? We have three different infantry battalions in the Army forces stationed in the Canal Zone. One is a conventional infantry battalion which, when transported, is transported in trucks. Another is a paratroop battalion and the third one is an armored infantry battalion in which the troops are transported in armored personnel carriers. Each vehicle holds 12 men, an infantry squad of 12 men plus a driver. This is a diagram of it. Now we have this vehicle in the Zone as well. This is a training picture and has nothing to do with this exercise. This is an anti-aircraft weapon and these are put in positions when they have an alert around the locks and around the generating stations to defend against aircraft. These were nowhere near the border however. This is a tank; this is a true tank. Now this is what a tank looks like and this is what an armored personnel carrier looks like. This is what we use. The personnel carrier has $\frac{1}{4}$ inch of armor on it.

Ambassador Martin: Isn't it aluminum?

General O'Meara: Yes, this is aluminum. Wait a minute. Yes, the old ones had $\frac{1}{4}$ inch steel. This is aluminum and it's—I forget what gauge aluminum it is. It's hardened aluminum.

General Mabry. It will deflect rifle fire, that is about all.

General O'Meara: Yes, it will protect the men riding inside it from mortar fragments, from small fragments of

artillery shells, from rifle fire if it isn't too close and too high powered a rifle. At a distance it will deflect rifle fire. In this age of atomic warfare they are very important because they will protect the infantrymen riding inside them from the flash burn and from radiation and from a certain amount of blast from atomic weapons. All our infantry in Europe, for instance, are now equipped with this type of armored personnel carrier. I used to be in research and development and I had quite a bit to do with helping develop this vehicle.

Ambassador Martin: It does not carry offensive—

General O'Meara: It has no cannons. It has a machine-gun that can be used to protect it against attacking aircraft or, of course, the machine gun can be used against ground troops as well. One machine gun mounted on top of it. The rest of it is just infantry squad with its own infantry weapons. In our Army we teach that the infantry squad always dismounts from this vehicle in order to fight. The Germans have a different theory. They think sometimes you should fight from inside the vehicle. This is a tactical argument of course.

Ambassador Martin: But there is no means by which they could fight from within the vehicle, is there?

General O'Meara: Well, they can, I guess, raise the top of it but then they have to stand up and shoot out.

Ambassador Marinho: (In English) Thank you. I am satisfied.

Mr. Oribe: We would like to ask you General, these armored personnel carriers, when they were near the border, did they carry their machine guns on them?

General O'Meara: Yes, the machine guns were mounted on them. However, none of them had machine gun ammunition. No machine gun ammunition was issued to any troops during this incident.

Ambassador Martin: I think it's also fair to say from my personal observance that they came up and dropped the troops and then went back to an assembly area behind the Tivoli Hotel, and when the Peace Committee was there, went around on a Monday, they saw them behind there in the assembly area and they got direct observations of these personnel carriers at that time.

Mr. Oribe: So these personnel carriers were called tanks by the Panamanians?

Ambassador Martin: I think so.

Mr. Oribe: And let me ask you, General, another point. I had some information to the effect that not only the U.S. Army soldiers fired but that civilians from the Zone also fired on Panamanian crowds. Do you have anything to say on that?

General O'Meara: I have no evidence to support that whatsoever. I am sure that after my troops took control there was no shooting from within the Zone because if there had been my troops would have investigated it immediately. My officers had full responsibility for maintaining order and discipline among their troops and anyone else in the area. Now before my troops arrived on the scene, of course, I had no observation under my immediate command; I can't speak as to this except that it seems to me the situation developed rather rapidly and it seemed to me quite unlikely that any of the civilians would have gotten involved in any shooting at this time.

Ambassador Martin: I note that the Panama Canal Company when they were in charge has no evidence that there was any shooting by civilians other than the Panama Police. They have checked this.

Mr. Oribe: Has an inquiry been made of this subject or have you inquired of the civilian authorities?

General O'Meara: I have made no investigation of anything that happened before I assumed command. This is not my responsibility. I am sure the Governor has looked into this but after I assumed command my officers had responsibility for investigating anything of a suspicious nature, for permitting no disorderly acts of any sort, and I know there was no shooting once the troops had deployed in position and taken over.

Ambassador Martin: I think that it was noticeable for quite a period after you took over your troops were not doing any shooting and if any shooting had come from our side they would have quickly heard and noticed it.

General O'Meara: They certainly would. At no time was there enough shooting from our side so that any other shooting from our side would not have been noticeable. There were never any large number of shots being fired. Designated men, who were doing any shooting at any given time, were controlled by their officers or by a designated noncommissioned officer.

Mr. Oribe: Thank you very much. May I ask you another thing, sir. Could you tell us if, according to the information you have, if there was any organized leadership on the part of the crowds, sharpshooters or snipers, was there some sort of coordination behind the whole thing or was it just a spontaneous reaction from more or less excited people?

General O'Meara: No. There were definite indications of leadership, particularly during the time that the mobs of which you saw one marching down the street in the movie. At the time that these mobs were being formed and being incited to additional action there was well organized leadership, the leaders being equipped with loudspeakers and several of them working in conjunction with each other.

Ambassador Martin: I am going to say something more about that in my summary.

Ambassador Gavito: I have a question. Were there snipers in the Instituto Nacional Building because we saw many bulletholes in that building?

General O'Meara: There was some firing coming from the Instituto Nacional early in the game but it was not troublesome for long.

Ambassador Gavito: The bullet holes there are very small bore which would indicate that they are from a .22 rifle.

General O'Meara: We never fired any .22 rifle of any sort. We have not issued any to any of the troops. Neither did the police. No .22 rifle was fired by any American, I can say that with certainty. Certainly not by any military. I know the police were not equipped with .22 rifles also.

Ambassador Gavito: That has lead the Panamanians to believe civilians were firing at that particular building.

General O'Meara: I think the Panamanians are correct. In my opinion there were civilians firing, Panamanian civilians.

Mr. Oribe: But did the U. S. Army troops fire against sharpshooters?

General O'Meara: No, we never brought any fire against the Institute.

Ambassador Martin: When the military were in control.

General O'Meara: When the military were in control we brought no fire against the Instituto Nacional.

Ambassador Gavito: I have another question. Colonel Sachse, in the Colon area you mentioned only a shotgun. Did your troops ever use any of the kind of firearms other than shotguns?

Colonel Sachse: On that, sir, I would say that, with one exception, at no time during my operation on the Atlantic

side was ammunition used in any way. I will say no ammunition other than shotguns was used against the Panamanians firing into the Republic whatsoever. I did request in the early morning hours of the 10th, when we were getting heavy sniper fire, to put out the lights up and down the street to the rear of the YMCA. The snipers in the rear of the Commissary building prevented us from getting out there to put them out. We were trying to get the lights out so we could go back and forth to the Masonic building without being seen.

General O'Meara: In other words he shot out street lights. He was given authority to shoot out the street lights in the Canal Zone and he used rifle fire to do that.

Colonel Sachse: Now in doing that my Executive Officer, who is my assistant, personally supervised. We had permission from higher headquarters to do this and he fired 8 rounds of M-1 ammunition and 2 rounds of caliber .45 ammunition to shoot out these lights. The 10 rounds of rifle ammunition and pistol ammunition were all that we fired during the complete operation.

Ambassador Martin: I think it's also interesting that the Colonel, the Battalion Commander, had to go to higher headquarters to get permission to fire rifle ammunition at street lights. That is how firing was under control and that was the pattern that General O'Meara set everywhere.

Colonel Sachse: That's correct. My orders from General O'Meara were that live ammunition would not be fired at Panamanians under any conditions unless he personally approved it.

Mr. Oribe: Let me ask you another question. When your troops under sharpshooter fire you can at your discretion and considering the danger to your troops, authorize controlled fire against them?

General O'Meara: You will recall, Mr. Ambassador, that there was a riot here in 1959 and I took command here in

1961 and when I came here in the spring of 1961, just about 3 years ago, February of 1961, I looked at the plans which had been used should there ever be another riot. At that time the Governor of the Canal Zone was Governor Carter. We reviewed the plans very carefully together. We arrived at an agreed plan and this plan specified very carefully that only minimum degrees of force would be used initially and each degree would be authorized by a senior commander. If I were not on the scene then it would have been another senior commander. Only a senior commander would be able to authorize an increase in the level of force. Now this is our regular plan that we worked out. That order even specified that tear gas would not be used until it was authorized by a senior commander. However, at the time that the Lieutenant Governor Colonel Parker asked me to assume responsibility and take charge of all operations, the situation was already so acute and there was already this large number of mobs, unruly mobs in the Zone that in giving the orders to the troops to clear the Zone and to seal the borders I told them to use tear gas from the first, as I felt it was the only way it could be done and this was the minimum level of force which we could use in order to get them out with the least injury and damage possible.

Ambassador Martin: In fact that was a reduction from the level of force which the police had had to use.

General O'Meara: The small number of police, of course, who in many cases ran out of the limited stocks of tear gases had already used gunfire, but when the troops came in the troops were not authorized to use gunfire; they were not authorized to fire their weapons, but they were authorized to use tear gas from the first and they did.

Ambassador Martin: I would point out to you too, General, that from my recollection it was late Saturday or early Sunday that you stopped counter-fire against the

snipers and, for example, all the night of Sunday-Monday when there were about 800 rounds fired and you were not responding.

General O'Meara: We were not responding at that time but by that time we had withdrawn the troops to positions from which it was difficult for them to be hit. We had sandbagged the windows in the Tivoli so that the people who were observing from up there were not likely to be hit and at this time we stopped counter-fire. Now we stopped, but the sniper fire resumed several times you recall as General Mabry told you. The first time was when I called Foreign Minister Solis and asked him to please have the Guardia Nacional stop the sniper fire and that I would be glad to stop the shotgun fire if he would do this and he said, "I will assure you, General, that it will be stopped." "I will call the Guardia Nacional right now." We stopped it for several hours at that time and there was a slight decrease in the sniper fire then but very slight and it resumed almost immediately. Then later on after we were taking more and more severe casualties I authorized selected rifle fire and again we ordered that to be stopped. But from about Sunday on we never fired another round though a great deal, in fact one night after that I would say there was more than 700 rounds fired by snipers.

Ambassador Martin: At us?

General O'Meara: At us. We never fired a round.

Ambassador Martin: The basic principle was that as soon as our soldiers were protected by the positions they were able to take and they didn't have to get out in front to move back rioters, then we did not respond to sniper fire.

Mr. Oribe: Thank you very much.

Chairman Plate: (By Interpreter) General O'Meara, Mr. Plate has two questions. One, in order to clarify the

allegations concerning the fact that our troops might have penetrated into Panamanian territory in Panama City, possibly in pushing the crowds back out of the Canal Zone. He has three specific points where we are alleged to have penetrated in the City limits. Avenue A and 27th Street.

General O'Meara: That is one of the most used entrances to Panama City. The troops at no time went over more than half-way across 4th of July Avenue. You were there at the time, George. Could you—

General Mabry: Yes, sir. At no time did any troops go further than the middle of 4th of July Avenue in that area. Now in addition to this—along this area of the boundary, it is about 10 yards further over into the Republic of Panama than the curb along Kennedy Avenue. It runs about 10 yards on this side of the Isthmus of the Thatcher Ferry Bridge.

General O'Meara: What he is saying is that at that particular point the troops were always more than 10 yards from the Zone boundary.

General Mabry: And after the next morning, well, that night when the barrier, the wire barrier was put in, it was put in about 50 yards from this side of 4th of July Avenue.

General O'Meara: It was about 80 yards from the boundary there.

General Mabry: The men remained behind the wire barrier. At no time did they get over that into 4th of July Avenue.

General O'Meara: Here we stayed well back from the border. Can you tell about the position of the troops there?

General Mabry: On the 10th, there was a group of about 25 or 30 young boys, around 18, 19 years old, who came in this area and were permitted to get within 15 yards of the Ancon Laundry. They were throwing rocks at the MP's—

a few MP's on the check point. The Army Lieutenant in charge of about 25 soldiers in that area, who were behind this building, had to move out to the check point, which was just about 20 yards from the Ancon Laundry, in order to protect the Military Police. He used a riot formation, did not go further than the junction of Roosevelt Avenue and the junction of Frangipani here, and used tear gas grenades. The boundary is at least 200 yards from this point.

General O'Meara: At no time during the night—the first night—did the troops go anywhere close to the entrance to Automobile Row; they stayed on this side of Kennedy Boulevard. As I told you, we never tried to clear those broad avenues completely, not even on the first night. Later on the troops were withdrawn behind a hedge, all the way back here (indicating on map), and they stayed there. At no time did any troops—and orders were strict on it in the plan and they were observed—at no time did troops go outside the limits of the Canal Zone. In fact, they contented themselves with—I think the farthest penetration that was made anywhere, in terms of “penetration”—the closest that they came to the far side of the street which was here (indicating on map) at what is called Avenida “A” and 27th Street, and there they stayed off—they only went to the middle of Fourth of July Avenue.

Ambassador Martin: May I say something that has a bearing on this, that, at one point in the Peace Committee, the Panamanians raised the question as to whether it would be agreeable to us for the Guardia Nacional to maintain order in those parts of the Canal Zone which were Shaler Triangle and Fourth of July and Kennedy Avenues. And, we responded immediately that this was what we had been asking them to do because we have not been trying to go up that far to maintain order. But their request to do so would be indicative of the fact that they felt we were not going out there to do it, and they wanted permission for themselves to do it. And we agreed to it immediately.

General O'Meara: There is only one other point I'd like to add. All along the Instituto area, the troops stayed on the high ground up that way (indicating on map).

Ambassador Plate: One other question, sir—On the Legislative Palace wall facing the Tivoli Hotel over one of the windows, there is a spray of shots which could appear to be made by automatic weapons fire.

General O'Meara: It was made by a man who had a clip—an M-1 rifle—he had a clip of rounds. In fact, it was made by the man you saw firing. He shot several times—the young soldier. He was a good shot, but he apparently got a little excited when his friend was shot alongside of him. He fired about the number of rounds in his clip, one after another, aimed; but it was dark and he wasn't aiming very carefully. He was aiming at a window. It was a clip of an M-1 rifle, and the first time he ever fired a gun in anger, no doubt, and he didn't do a very good calm job of it. It was not semi-automatic. He fired each one with a single fired shot, you see, something like—he shot and then he'd shoot again and he'd shoot again.

Ambassador Martin: With a clip in, you can fire very rapidly.

General O'Meara: You see, he pulled the trigger for each one. But he was shooting at that window, and he didn't get very close to it; he wasn't doing a good job of shooting. And, he didn't aim enough between—he shot, and then he shot again, and then he shot again. And just then he saw a friend of his shot and he was trying to get a shot into that window. He pulled the trigger on each one, not aiming carefully enough to get his shots inside the window—bang, bang, bang—that's the way he fired the whole clip.

Ambassador Plate: Does this weapon convert to automatic fire in a moment?

General O'Meara: It can be done if you—

Ambassador Plate: But does this particular weapon have some sort of instrument on the weapon itself that would convert it to automatic fire?

General O'Meara: No, no. The most it does is semi-automatic; you have to pull the trigger each time. It's not like a tommygun where you can pull the trigger and spray it.

Mr. Oribe: Can I ask you another question, General? Did you have groups of sharpshooters firing during this time?

General O'Meara: Well, there was one shown here, and I think there is a little more footage—we showed all that's there—we haven't any more film, just what we have here. There was one picture of the young soldier; you can see him shoot about two shots and you can see him recoil each time.

Mr. Oribe: Well, let me ask you another question, sir. You know that, of course, at the beginning of the whole incident, we had a program of flags at the high school. And, of course, you must have been aware that, on the 7th of January, students decided to protect the flag and prevent the authorities of the school from lowering the flag, as was the order from the Governor-General. Now, did you have any reason in your report to anticipate that this situation might create or develop into an incident with the Panamanian within a short time?

General O'Meara: No, I had no indication that this was going to—my intelligence officer had no indication that this would create an incident of any sort—we had no intelligence indications.

Mr. Oribe: But all the newspapers of Panama carried the story, front page.

General O'Meara: Yes, but they had done this previously. This was not a new affair. I mean, from time to time,

especially when the discussions about flying the flag were being—at the time when one of the employees of the Panama Canal Company filed a civil suit against the Governor for raising the flag. There was a great deal of discussion in the Panamanian newspapers about the flag. So that this was not something which was wholly unusual.

Ambassador Martin: I think that the only really sensational play that was given prior to the incident was the Thursday morning issue of *La Critica*, which did so; otherwise, it was reported fairly factually. So we had not been led to believe there would be a problem, either in the Embassy or by the Governor in leaving or in discussing with Solis that afternoon whether he saw any reason why he shouldn't go, which he said he did not.

Mr. Oribe: Well, thank you very much.

Ambassador Martin: I have a little summary. I will wait until the Chairman returns.

(There was a short recess.)

Ambassador Martin: Mr. Chairman, we have appreciated this opportunity to present the facts of the developments as we have seen them. I want to do a very brief summary of the conclusions we reached, some of the problems we see, and certain evidence that didn't fit into any of the things that have been presented to you thus far. I have about five points to deal with.

The first point is on the flag incident. It seems to me that we were trying our best to settle the flag problem amicably and in accordance with our agreement with the Panamanian government. Governor Fleming, as he indicated to you, had every reason to believe that an amicable settlement involving flying both flags—U. S. flag and the Panamanian flag—at the Balboa High School was about to be reached when he left for the States. Now, as you know, subsequently Secretary Vance, on Saturday the 11th,

ordered that both flags be flown at all U. S. school locations in the Canal Zone. And, I believe it was on Wednesday morning following, the 13th—wait a minute, I'm sorry—the 15th, when school was reopened after the incident, that both flags were flying in front of all the schools. In connection with the student movement itself, it seems to me we took every possible precaution to prevent an incident involving a personal clash between the Panamanians and Americans. We felt, as Colonel Parker indicated, that we had been successful, and the people were leaving the Zone without any incident. The people were leaving without any injuries having taken place. And there was every reason to expect that, if the Panamanian authorities had responded to the call, which we had made to them in good time, to disperse the students—and, assuming this was just a student demonstration and not part of any thing bigger—it could have ended there.

Unfortunately, it did not end there, and there was subsequent violence. With respect to that violence, as long as the police were in charge, I think it is clear that they did their best, with tear gas and the other means available to them, to prevent attacks on American homes and property and lives in the Canal Zone. They were preventing them from attacking, being attacked by mobs who were committing arson on American and Panamanian property, engaged and bent on acts of violence. In time, to stop this, they were forced to use weapons fire over the heads of the mobs and into the pavement in front of them. The soldiers, when they took over, used tear gas and confined themselves to fire only on a selected basis against snipers, and then only until they had gained protection for themselves. And, for long periods of time on both sides of the Zone, we suffered sniper fire and casualties, without response.

I think that it is fairly clear, from where we sit, that the violence the night of January 9th involved large numbers of people and was a fairly uncontrolled emotional outburst

that was striking out at everything, Panamanian or American. But, in the remaining 3 or 4 days, we were dealing with relatively small crowds who were being exhorted by individual agitators to new acts of violence and with a small number of well armed and skilled, well supplied with ammunition, snipers. There seemed to be a substantial difference in character between the violence addressed to the Canal Zone, its property and its citizens, on the 9th and that on the 10th, the 11th and the 12th. I think that one of the real questions is why, in a situation of this character, the violence was maintained over such a prolonged period at the level at which it was maintained, and in the manner in which it was maintained.

Just one final point about the violence—we, of course, do not have any authentic information about the Panamanian casualties. We have seen their press reports. We have seen also press reports indicating that somewhere between 5 and 7 of those who died were suffocated in the fire in the Pan American building. There are other reports of causes of death among the Panamanians, enough to lead us merely to suggest that to attribute all the deaths and casualties to U. S. action is probably not accurate and deserves—justifies careful examination.

Now, the question that I want to come back to is why this violence was so prolonged and took such sharp and aggressive character against U. S. personnel. The first point has to do with the cooperation of the Panamanian authorities. We have recounted to you a number of cases, starting just after the students had left the Administration building, in which we had sought from the Panamanian authorities at various levels, including the established channels for dealing with violence, namely, the Guardia Nacional, their cooperation in restraining the Panamanians in Panama where we, obviously, could not deal with them. And, we had invited them to disperse the students. We invited them, on several occasions, to clean out snipers and

did, in fact, withhold counter-sniper fire to give them an opportunity to do so in safety. We invited them to set up a Colon Corridor road block to protect Rainbow City from the mob moving down. We invited them, on numerous occasions, as they have done in the past, to control Shaler Triangle and Fourth of July Avenue—this was even done formally through the Peace Committee, when they were here, when they asked if this was all right. But, until Monday morning—3½ days after the start—effective action was not taken by the Panamanian authorities, for reasons, which we are not aware of, it was not taken; for reasons, which we are not aware of, it was taken on that Monday morning, and, in the early hours, with no great difficulty as of that time. Snipers were cleaned out of the Legislative Palace, cleaned out of the area around the Masonic Temple in Colon, and there was no sniping from then on.

There is one little additional point on this. We were informed through proper channels on the 10th that the Guardia Nacional might need some additional tear gas. We loaded a truck with the tear gas that they had requested and put it by the back of Curundu gate and it was picked up on the night of the 12th. Why this delay in accepting assistance in dealing with the mobs is a question to which we have no answer. Certainly one would think that one of the factors in the prolonged violence must have been the fact, the reason for which I cannot explain, that the Panamanian authorities did not take the action prior to Monday morning which at that time they did take quite effectively.

Now, secondly, there is the question which has been much discussed of the role of leftist extremists in the violence which took place. I think that there is some evidence for believing that the promulgation of the crisis and its acutely violent character during this three to four day period, the speed with which the people even on the night of the 9th, developed a capacity for rock throwing and Molotov cock-

tail throwing and then for firing at us with automatic weapons which are not easy to come by all suggest that there was some kind of organized activity and support of violence. I don't want to confuse this with the attitude of the Panamanian people on the issues between them and us with respect to the treaty. You are aware of that situation. What I am talking about is the acute violent form for this prolonged period which the action took.

I believe also we have mentioned to you the trucks with loudspeakers which toured Colon. We called the Panamanian authorities to pick up a loudspeaker truck which was constantly putting out the most inflammatory incitements to violence, which would be a simple task. They were not picked up nor was similar incitement to violence on this side. Just as one example of this, you will recall that on Saturday afternoon we had three different attempts by the crowds to move out of the Shaler Triangle into the area around the Tivoli. We had one or two attempts elsewhere of mob violence 48 hours after the original incident. At the Peace Committee meeting that night I said that we had information, we had observed known leftist extremist leaders talking to the mob in Shaler Triangle and inciting to these actions. The Panamanian's representatives said that it would be helpful to have the names of these people so they could get them out of circulation and stop this incitement to further violence. We gave them the names of ten people that we had observed. They were all well known leftist extremists in Panama, well known to the Guardia Nacional. When we gave them the names they indicated as much. The next noon there was a funeral procession for the Panamanians who were killed and six of those ten people were in the front row of the funeral procession and no apparent attempt had been made to pick any of them up or prevent them from undertaking further incitement.

We wish to point out to you some of the kinds of people that were providing a certain degree of leadership and

incitement to the mobs which were roaming the streets to continue the attacks, keeping it going into the 13th and backing up the sniper operation. We have three pictures taken during a rally which ended up with speeches in front of the Presidential Palace on the afternoon of the 11th, and when President Chiari came out on the balcony and made a speech. I would like to show you a shot, just point out some of the people who are there (Pointing to photo—Slide No. 26). The first gentleman here is an official photographer—for the Guardia. They knew these people were here and were keeping a record of it too. The second person is over here holding the flag. This is Pedro Rivera, a member of the Communist Party and a leader in the University Students Union. The next one, this gentleman here with the glasses, is Eligio Salas who is a member of the Communist Party. He is President of the University Students Union which is dominated by the Communist faction at the University of Panama and has been a very active pro-Castro-Cuban speaker in Panama for some time and is well known.

Next, this is a similar picture here (Pointing to photo Slide No. 27.) You see the girl. This is Virginia Ramirez who is a member of the Communist Party. She is a former student leader at the School for Girls. She was active in the '58-'59 riots and she was active with the Communist Party while attending school in Brazil during the past year. Then we have here with his face turned away but identified very clearly by our people who know him—Cecar Carrasquilla, a Communist, an active member of the student group of the National University. Also active in the VAN which is a Castro controlled and financed organization which has been active in all of these events and in previous events. This particular gentlemen left on February 6 for a trip to the Soviet Union. We don't know whether he has returned yet or not, but he as well as those other people make these kind of trips fairly regularly. Then we have as number six, a gentleman in the

checked shirt right here. Alberto Calvo, a Communist and leader in the National University who has studied in the United States but is back here and very active in the University Communist organization.

Next one. Here we have one of the very active—yes, this gentleman right here, Floyd Britton, one of the best known Communist leaders in Panama. He had four months training in Cuba. He has also been in training courses behind the Iron Curtain in the Soviet Union and is an active member of the Communist Party and particularly active with the students. And then here speaking at this point (Pointing to photo—Slide No. 28) is Huberto Bruggiatti, also a member of the Communist Party and active in the VAN to which I referred previously. He has traveled to Cuba. He was there for the anniversary of the Cuban Revolution both in 1960 and 1961.

This, I think, gives us a brief idea, that is all, of some of the people that were playing an active role in the front row of the demonstrations. It was these kinds of people that were in Shaler Triangle talking to the crowds and urging them to move into the Zone. Now I don't—as I said before, I don't question the feeling of a great majority of the Panamanian people but it does appear there might be some reason to believe that the organized violence, the continuation of the violence owes something to the desires of the people like this to keep the Latin American scene in a state of turmoil and to damage relations between the United States and one of its friends.

Also we will have in our exhibit further materials from the Panamanian press and radio which are of a kind which could have no purpose other than to prolong the violence and agitation to serve outside interests. I talked about these two factors in the prolongation of the serious violence which I think has made it more difficult to solve the problem. I don't attempt to assign degrees of responsibility in this matter, but I would suggest that a group

such as yours which has access to information from both parties should find it of interest to see what can be found out about the degrees to which these two elements, the reluctance, the slowness of the Panamanian authorities of taking action on their party and the interests of certain groups in prolonging the violence may have had in causing this to become as serious an incident as it did rather than something that was over with when the students left, or at least over the night of January 9.

Now in closing I just would suggest that we feel that the evidence is quite clear that we did not at any point invade the territory of Panama. We did not, as has been frequently charged, use tanks or cannons or machine guns or airplanes, weapons of this kind. On the contrary we exercised what we felt was maximum restraint, only using force to the degree necessary to protect lives of Americans and that in fact if one would get down to the point of aggression one could make an argument that it was the Panama Canal Zone that was attacked rather than vice versa. Thank you very much.

Mr. Oribe: Mr. Martin, we had assumed no inclination for the known participation of the La Guardia Nacional in the first, shall we say of the incident when everyone was afraid that the Guardia Nacional might be involved in hostilities or shooting with U. S. Army, they wanted to prevent that, and another one is that La Guardia Nacional would not take action against their own people because of accusations that they were not patriotic. I would like to hear a comment on that.

Ambassador Martin: Let me just say something first, if I might, Mr. Ambassador. In the first place, when we first asked for assistance when the students were leaving the Canal Zone there were no U. S. troops around. There was no large group of Panamanians around so that neither of the points would in my judgment have applied. Secondly, during the period from, shall we say the morning of

the 10th until the following Monday morning, the 13th, there were several occasions on which we held fire and there was every evidence by direct communication and through Peace Committee of a willingness to cooperate with the Guardia Nacional in getting the situation under control. And, secondly, during that period there were not the enormous crowds that would have to be dealt with such, as the five or six or 7,000 that was performing the night of the 9th. Now the only other comment I would make is that if the La Guardia Nacional felt that it was unable for political reasons to deal with the Panamanian crowd on the 9th because of the effect on its reputation they could hardly protest too much if we were then forced to use our peace-keeping equipment in order to prevent the loss of lives in the Canal Zone.

General O'Meara: I think the danger of any conflict between the Guardia Nacional and the U. S. Military forces in the Canal Zone is very remote, very unlikely indeed. The Guardia Nacional is a very small force considering the large responsibility which rests upon it. It is a well trained force for which I have respect and for which my officers and my men have respect. I have served in my 33 years of commissioned service in a good many parts of the world where there is a feeling of animosity between the local police and the military including some stations in the United States some years ago. There is none of that between the Guardia Nacional and the military. The only other place where I have seen an almost complete lack of animosity between the soldiers, even the drunken soldiers, and the police is in Germany. There our occupation forces feel that the German police are taking care of them and not trying to persecute them or to throw them in jail, and they don't. They take them home and bring them into the barracks, turn them over to their military leaders, their sergeants, when the soldier gets into trouble, when he gets too much beer under his belt or gets into a fight with some local hoodlum. The same sort of feeling exists between the

Guardia Nacional and the soldiers here in the Canal Zone. It's been a matter of great satisfaction to me in the past and this sort of thing, this sort of feeling carries through under times of great stress such as we were experiencing here on the 9th and 10th and 11th and 12th. I considered the possibility of action, even accidental action, between the Guardia Nacional and the U. S. military very remote.

Ambassador Martin: It is true that during a considerable period your liaison officer continued to be in the headquarters.

General O'Meara: We communicated with the Guardia Nacional both by telephone and by radio, and by liaison officers.

Chairman Plate: Mr. Martin, we thank you very much for coming, and gentlemen, thank you very much.

(The council was adjourned at 12:30 P.M., 15 February 1964.)

Film Narrative by Mr. Baldwin (See page 14 [116a])

Here are the North American students at the Balboa School as well as a few adults, or the parents of the boys. Then on the other side of Gorgona Street are the Panamanian students of the Instituto in front of the Administrative Building. Only the Panamanian flag flies here. Here they are talking to Captain Wall and the police is holding back the 200 in this part. The Panamanian flag only again. Here they start to walk across Gorgona Street in direction of the school. Here you can see the torn flag through the boy's shirt on the other side. (The shirt can be seen through the torn flag.) Here are the other students, the North Americans, waiting. Here is where an explanation is being given to them. They are asking for the Panamanian flag to be raised on the flagpole. Everybody watching. Here is where they are being told that the ceremony cannot be held. I want you to watch this boy who is here with an open book, where you will see other

actions of this gentleman. Here they are arguing between themselves. Here they have started to push the students back when they left. Here is where one fell and got up. Here he continues with the flag. And here when they started (voice interrupted) the two flags, yes.

Film Narrative by Mr. Baldwin (See page 23 [122a])

Here are Major Urrutia and here are the students on Kennedy Avenue in the Canal Zone; and here they are breaking the oil tanks they took from the gasoline station in front. This here is the bus station in the Canal Zone by Shaler Triangle and you can see them stealing the equipment, breaking everything inside, breaking the loudspeaker, the bus system. Here they are trying to set the bus station on fire. Here there is also a car on Kennedy Avenue in the Canal Zone. (2nd voice) Ancon Laundry. Here we have the boys who are on Kennedy Avenue in the Canal Zone breaking the building of the Pan American which is in Panama. Here they have set everything on fire. You can notice that there is no unit from the Panama Fire Department. Here we are on "J" Street and Kennedy Avenue where cars with Canal Zone plates are being burned. Here we are on the same Kennedy Avenue next to PAA and KLM. Here they have pushed a car into the building and there is where the fire started. This scene is from the Zone into Panama. There the cars are being pushed again. The Pan American (building) again. Here they are removing all of the Braniff equipment. Burning the building. Here is the mob in front of Shaler Triangle. Here they are breaking the signs in the Zone. Here is President Kennedy Avenue in the Canal Zone where they are breaking the signs.

Transcript of Tape Recording (See page 36 [132a])

Light planes are covering the events from the air, we don't know what their objective is, but the planes are flying over the streets and the crossings, the public and

are in Panamanian air space . . . and the position of the planes on this flight are keeping Panamanians in an intense state of nervousness, who think they might be the object of a aerial bombing . . .

. . . where most of the members of the Canal Zone police are deployed, armed with rifles and sporadically engaged in the sport of firing toward Panama

. . . to offer the latest news coming from the front, from the war front, the firing line . . . at this moment, 6 war tanks of the United States Army have just come upon the scene to try to snuff out the patriotism and the fervor of the Panamanian people. And we are turning the microphones over to our colleague (name unintelligible) while we go to the firing line to report on the latest events. Six U. S. Army tanks are poised, awaiting orders to go into action and fire upon the Panamanian people. Just now, moving along John F. Kennedy Avenue are several United States Army tanks . . . they are moving along Kennedy Avenue, pointing their cannon toward the Panamanian sector . . . Here again is my colleague Homero Valazquez . . . a Panamanian youth, with great courage, had in his hands a Molotov cocktail and jumped at the tank with the Molotov bomb—fortunately he was unable to reach it.

. . . It seems incredible that the United States Army, that has defended freedom and democracy in such far away places as Korea, China, Africa and all parts of the world . . . here in Panama, that same army is an instrument of terror and persecution, to snuff out the patriotic aspirations of freedom-loving people, who seeks to exercise their full sovereignty in the Canal strip.

. . . We repeat—Panamanian people, we have just been informed that a United States Army tank is practically in Panamanian territory, with its menacing cannon muzzles pointing to the crowd. The people are incensed over this newest outrage. It has already entered Avenida

Nacional . . . practically . . . the situation is extremely grave . . . extremely grave. It seems that the tank is advancing along Avenida Nacional. The tank is in Panamanian territory, gentlemen . . . It is necessary that our country ask for a meeting of the Security Council, because of the aggression by the United States Army . . . We repeat, the army tanks are already here, on Avenida Nacional, in Panamanian territory, and behind them is a heavy concentration of United States Army troops and the people have had to fall back to avoid the brutal aggression by the North American Army against the Panamanian people.

At this moment we are told here at the operations center on Avenida Nacional across from the Good Neighbor Bar, that some Panamanian elements, now properly equipped with war armaments, have managed to obtain some Molotov cocktails and a platoon of Panamanians, in a suicide move, have just attacked one of the tanks and threw themselves upon the tanks, and they threw a Molotov cocktail against the tanks. We repeat, a platoon . . . etc.

We have just witnessed the most beautiful spectacle our eyes have ever seen—four youths, none older than 18, each armed with a bottle of gasoline. They grabbed an empty fifty gallon drum—any old drum—and started to roll it toward the armored car which is stationed about 60 yards from the Limits here. They are writing an extremely beautiful saga of courage.

. . . For if we were armed, we would be in the heart of Quarry Heights, demanding the head of Fleming and all the other traitors and bums of U.S. politics. Here all we Panamanians, united under the National flag, with no partisan differences, will be on the firing line at every moment to battle those who believe our country is a protectorate . . . We are going to show them that here there is dignity, honor, patriotism . . . The Panamanian people today have taught a lesson to the North American fools,

to the Latin American people, that it is a country willing to defend its sovereignty, the Canal Zone.

Panamanian people! Upon our Panamanian land . . . in these moments of crisis that our Republic is experiencing, where men are shedding their blood, where youth has given its life, it is not possible for the people to remain in their homes. It is necessary to come forth to defend the country in these difficult times.

Cross-Motion for Summary Judgment

Plaintiffs move the court as follows:

1. That it enter, pursuant to Rule 64 of the Court of Claims Rules, a summary judgment in plaintiffs' favor for the relief demanded in the petition on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law.

This motion is based upon:

- (a) The petition filed in this case and the defendant's answer thereto; and
- (b) The documents and photographs accompanying the stipulation previously filed in this case and referred to therein as Exhibits "A," "B," "C," "D," "E," and "P."

Respectfully submitted,

RONALD A. JACKS

Ronald A. Jacks

Attorney for Plaintiffs

(Decided June 14, 1968)

THE NATIONAL BOARD OF THE YOUNG MEN'S
CHRISTIAN ASSOCIATIONS, THE SOJOURNER'S
LODGE, MASONIC TEMPLE, AND THE COM-
MERCE AND INDUSTRY INSURANCE COMPANY
v. THE UNITED STATES

Ronald A. Jacks, attorney of record, for plaintiffs.

Martin Green, with whom was *Assistant Attorney Gen-
eral Clyde O. Martz*, for defendant.

Before COWEN, *Chief Judge*, LARAMORE, DUFEE, DAVIS,
COLLINS, SKELTON and NICHOLS, *Judges*.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAIN-
TIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

COWEN, *Chief Judge*, delivered the opinion of the court:

Plaintiffs¹ brought this action to recover just compensa-
tion under the fifth amendment for the destruction of and
damage to their properties in the Canal Zone during the
course of and shortly after the Panama riot of 1964. There
are two parts to plaintiffs' claim. The first and major por-
tion is for damages inflicted on plaintiffs' buildings by the
rioters after the buildings had been entered by United
States troops seeking cover from snipers' bullets. In the sec-
ond and lesser segment of the claim, plaintiffs seek recovery

¹ The Commerce and Industry Insurance Company, the insurer of the YMCA
property, joined in the action because it paid a portion of the loss under its
policy.

for losses alleged to have been caused after the cessation of the riot as a result of certain changes made in the Masonic Temple by the defendant for the purpose of fortifying it for use in any future riot. For the reasons hereinafter stated, we hold that plaintiffs are not entitled to recover.

The case is before us on cross-motions for summary judgment, and the basic facts have been stipulated.²

The buildings involved in this action are the YMCA building owned by the National Board of the Young Men's Christian Associations and the Masonic Temple owned by the Sojourner's Lodge of the Masonic Order. Both are situated on the Atlantic side of the Canal Zone in the City of Cristobal and are located next to each other just inside the Zone on Bolivar Avenue. At this location, 11th Street and Bolivar Avenue intersect and form a right angle boundary between the Canal Zone and the Republic of Panama. The Masonic Temple is located just inside the right angle, and it is bounded on the right by the YMCA which faces Bolivar Avenue and on the left by the Old Commissary Building which faces 11th Street.

On the evening of January 9, 1964, a group of 200 Panamanian students entered the Pacific side of the Zone in the vicinity of the Balboa High School and became embroiled in a dispute over the failure to fly the Panamanian flag alongside the United States flag at the school. The students left in anger without raising their flag and, as they did so, they began to damage property in the Zone.

As stated in the introduction of the United States Presentation to the Select Committee of the Organization of American States, the "students' fury became the spark for mass incursions into the Canal Zone by Panamanian rioters at

² The parties have agreed that the material facts are set forth in the official United States Presentation to the Select Committee of the Organization of American States established under the Resolution of February 6, 1964, to investigate charges of American aggression. Several other documentary exhibits are also covered by the stipulation.

numerous points along an extended border. The mobs attacked and killed U.S. and Panamanian citizens and burned and looted their properties. A maximum effort by the Canal Zone Police force was required to prevent the mobs from reaching U.S. residential areas. The number and force of mob attacks upon persons and property in the Zone exceeded the capacity of the police to contain them, and at 8 p.m. on January 9th, the Commander of the Armed Forces in the Canal Zone assumed responsibility for law and order in the Canal Zone." [Exhibit A at VI]

The rioting first reached major proportions on the Pacific side of the Zone and at 8:30 p.m. on January 9, 1964, General O'Meara, Commander of the Armed Forces in the Canal Zone, dispatched troops to the Pacific side with instructions to clear the area of rioters and to secure it against further unauthorized intrusions. Soon, thereafter, the military units began to clear the Pacific side, encountering moderate resistance.

Rioting in the Cristobal-Colon area on the Atlantic side of the Canal Zone, 50 miles away from the Pacific side, began at 8 p.m. on the night of January 9, 1964. By 9:15 p.m., a mob of 1,500 persons had formed and proceeded to the Panama Canal Administration Building, where they raised a Panamanian flag. Shortly thereafter, a contingent of the rioters broke into, looted, and destroyed the contents of the Panama Canal Company Office and Storage Building. They then broke windows in the Masonic Temple, and after entering the YMCA building, looted and wrecked its interior.

At 9:50 p.m. on the same evening, Colonel William Sachse, Commanding Officer of the 4th Battalion, was ordered to proceed with his troops to Cristobal with the objective of clearing the rioters from the Atlantic end of the Zone and sealing the border from further encroachment. When the battalion, consisting of the Panamanians retreated across Bolivar Avenue into the Republic of Panama. However, a battalion, consisting of about 700 men, arrived in the area,

a large group of the Panamanians retreated across Bolivar Avenue into the Republic of Panama. However, a number of rioters jumped from the second floor windows of the Masonic Temple and attacked the troops with lead pipes and sticks. After the Panamanians were ejected from the buildings, the troops linked up to seal off the Zone boundary. By that time, the troops were confronted with a mob of about 3,000 people, which began to assault them with a shower of rocks, bricks, plate glass, and Molotov cocktails.

Sniper fire began; one trooper was killed, two others were wounded by bullets, and many others were injured by the flying debris and Molotov cocktails. Although they were under continuous attack, the American troops were ordered not to return the fire lest innocent persons be injured in the crowded area. Therefore, only tear gas grenades were used to contain the mob and discourage the attacks. Finally, in order to protect his troops from sniper fire, the commanding officer moved them into the YMCA building, the Masonic Temple, and the adjoining Old Commissary Building shortly after midnight on January 9, 1964.

At 10 a.m. on January 10, 1964, the rioters launched a heavy attack of Molotov cocktails against the YMCA building, setting it afire. The Canal Zone firefighters, who attempted to control the blaze, were hampered by sniper fire and by 2 p.m., the troops were forced to evacuate the building and take up positions at the rear of the building in a parking lot which had been sandbagged during the night. The rioters then attacked the Masonic Temple with Molotov cocktails, and the command post which had been established in that building had to be abandoned. However, an observation post was maintained on the top floor of the structure, which was the highest building in the area. The YMCA continued to be a target for Molotov cocktails throughout the day and sniper activities continued at 12th Street and Bolivar Avenue. During the evening of January 10, the soldiers on the top floor of the Masonic Temple were under heavy sniper fire for 2½ hours. On January 11, the Old Commis-

sary Building was totally destroyed by fire started by the Molotov cocktails.

By 2:45 p.m. on January 11, 1964, three American soldiers had been killed and twelve had been wounded by sniper fire. When these casualties were reported, the commanding officer was granted permission to allow selected marksmen using shotguns to return fire on known snipers.

On January 12, heavy sniper fire and the use of Molotov cocktail were prevalent in the Masonic Temple area, and the second story of the Masonic Temple was set afire on the same morning. Sniper and fire bomb activity continued in the area until midnight of January 12, 1964, when the crowd dispersed.

On January 13, 1964, the Panamanian National Guard took effective control of the Colon side of the boundary and hostile action in the area thereafter ceased. At 8 a.m. on Thursday, January 16, 1964, General O'Meara relinquished control of the Canal Zone to the Governor of the Canal Zone.

The YMCA's auditorium-gymnasium was totally destroyed and the remainder of the building was badly damaged. After deducting an amount which they have allocated to damage done by the rioters before the Army entered the building, the YMCA and its insurer seek recovery of \$212,196 for the loss and damage to that building. Because of its predominantly concrete and brick construction, the Masonic Temple suffered considerably less damage. After again making an allowance for damage attributable to the rioters prior to Army occupancy, plaintiffs claim \$32,996.70 for property loss to the Masonic Temple.

In addition to the YMCA building and the Masonic Temple, private properties of churches, steamship agencies and lodges were damaged during the riot. Also, some 160-odd automobiles were damaged or destroyed.

Publicly owned property damaged or destroyed in Cristobal included the Panama Canal Office and Storage Building,

the Sanitation Office, many railroad ties, street lights, and traffic and railroad signals. A substantial portion of Government property used by the Inter-American Geodetic Survey was burned and looted. In addition, United States military personnel reported loss of household goods and possessions valued at \$72,000.

I

Against the foregoing factual background, our first task is to decide whether the destruction of the YMCA building and the damage to the Masonic Temple during their temporary occupancy by American troops occurred under such circumstances as to constitute a compensable taking. It is axiomatic that the fifth amendment is not suspended in war-time, but it is equally well recognized that a destruction of private property in battle or by enemy forces is not compensable. As this court declared long ago, "No government, except as a special favor bestowed, has ever paid for the property of even its own citizens in its own country destroyed in attacking or defending against a common public enemy * * *." *Perrin v. United States*, 4 Ct. Cl. 543, 547-48 (1868), *aff'd*, 79 U.S. (12 Wall.) 315 (1870). See also *United States v. Pacific R.R.*, 120 U.S. 227 (1887).

The United States was not at war with the Republic of Panama at the time plaintiffs' buildings were occupied but Army troops were confronted with a large and hostile force under conditions presenting immediate danger to them, as well as to the lives and property of American citizens in the Canal Zone. In a report which both parties have agreed is a factual account of the rioting in the Cristobal-Colon area, it is stated:

* * * The second phase began with the arrival of the troops between 10:15 and 10:40 p.m., when the mob violence grew until it became a pitched battle between the rioting mob backed up by concealed snipers, on one side, and the U.S. Army troops on the other.³

³ Page 7 of fact sheet compiled by the Office of General Counsel of the Army in evidence as Exhibit B.

Consequently, we believe that the same principles of law are to be applied here as obtain in a case where the military forces of this country are engaged in combat with a public enemy.

Plaintiffs have expressly excluded from their claim the damage done the YMCA building and the Masonic Temple by the rioters before the buildings were occupied by American troops. However, they stand on the proposition that their buildings were appropriated for public use, and assert that during a war or at other times when private property is used by the Government, just compensation must be paid pursuant to the fifth amendment, except when such property is deliberately destroyed to keep it from falling into enemy hands. In support of their position, plaintiffs rely primarily on the dicta contained in *Mitchell v. Harmony*, 54 U.S. (13 How.) 115 (1852) and *United States v. Russell*, 80 U.S. (13 Wall.) 623 (1871). However, neither of these cases involved a situation where private property was destroyed while serving as a temporary refuge for our military forces during an actual confrontation with hostile enemy forces. In the *Harmony* case, the plaintiffs' property, which consisted of mules, wagons, and goods, was taken for the purpose of strengthening the Army for its expedition to Chihuahua, which was 300 miles distant at the time, and in the *Russell* case, Army officials requisitioned plaintiffs' steamboats to carry Government freight for a period of from 26 to 60 days. Neither *Harmony* nor *Russell* involved impending danger in the context of a hostile confrontation similar to that which we find in the instant litigation. Instead, the property in those cases was requisitioned in a manner much akin to the procurement of goods and services under contract—in the absence of immediate danger, after deliberation, and for a somewhat later and less temporary use.

Neither of the parties has cited nor have we found any court decision presenting a factual situation similar to that

now before us. In view of the broad language of the fifth amendment and the difficulty we find in determining whether compensation is required in this case, we look to the general principles announced in the decisional law to find the narrow and sometimes indistinct line that separate losses that are necessary incidents of the ravages and burdens of war from those situations where the Government is obliged to pay compensation to the owner of private property that is taken for public use.

In *United States v. Caltex, Inc.*, 344 U.S. 149 (1952), which is the latest expression of the Supreme Court on the subject, compensation under the fifth amendment was denied to the owners of private property destroyed by the Army to prevent its imminent capture and use by an advancing enemy. The *Harmony* and *Russell* cases were distinguished on the ground that, in both, private property had been impressed by the Army for subsequent use by it. The Court quoted the following dictum of Mr. Justice Field in *United States v. Pacific R.R.*, *supra*, and declared that it is the law today:

The destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences. Whatever would embarrass or impede the advance of the enemy, as the breaking up of roads, or the burning of bridges, or would cripple and defeat him, as destroying his means of subsistence, were lawfully ordered by the commanding general. Indeed, it was his imperative duty to direct their destruction. The necessities of the war called for and justified this. The safety of the state in such cases overrides all considerations of private loss. [344 U.S. at 153-54]

As we read the decision, we think the Supreme Court also approved the general principles set forth in the *Pacific Railroad* case and reaffirmed the doctrine of sovereign immunity for losses attributable to the fortunes of war or public necessity in times of imminent danger or peril. In the *Pacific Railroad* case, Mr. Justice Field noted the distinction between the immunity of the sovereign for the temporary

occupancy or destruction of private property as a necessary incident of military action urgently required to defend against an attacking enemy, and private property that is taken for later use by the Army. The Court there quoted with approval the following portion of the Veto Message of President Grant:

It is a general principle of both international and municipal law that all property is held subject, not only to be taken by the government for public uses, in which case, under the Constitution of the United States, the owner is entitled to just compensation, but also subject to be *temporarily occupied*, or even actually destroyed, in time of great public danger, and when the public safety demands it; and in this latter case governments do not admit a legal obligation on their part to compensate the owner [120 U.S. at 238 (emphasis added)]

In elaborating on the exemption of the Government from liability for the temporary occupancy of private property as a measure that is necessary for the safety and efficiency of troops during military operations, the court distinguished such uses of private property from a compensable taking occurring under conditions less than those of imminent peril, as where there is a voluntary requisitioning of steamboats to transport troops or munitions of war, or of buildings to house soldiers or to store war materiel (i.e., *Harmony and Russell*).

In *Franco-Italian Packing v. United States*, 130 Ct. Cl. 736, 128 F. Supp. 408 (1955), this court had occasion to re-examine *United States v. Pacific R.R.*, *supra*. As a result of that examination, the court, in an opinion written by Judge Laramore, declared:

The Supreme Court in *United States v. Pacific Railroad*, 120 U.S. 227, established the rule that the sovereign is immune from liability for confiscation of private property taken by defendant, through destruction or otherwise, to prevent it from falling into enemy hands, or to protect the health of troops, or as an incidental element of defense against hostile attack and is not compensable under the fifth amendment. [130 Ct. Cl. at 747, 128 F. Supp. at 414]

The above-quoted expression is admittedly dictum, but we think it announces a principle of law which should be applied in deciding the issues raised by the particular facts of this case.

As we have already noted, it is a thin line which the case law has at times drawn between sovereign immunity and governmental liability. The lack of more certain guidelines is unfortunate; however, we think it is at least clear that the decisions have rather consistently placed on the opposite sides of that line a temporary occupancy of private property which is immediately necessary for the safety of troops or to meet an emergency threatening great public danger and a voluntary appropriation of private property under conditions where there is no compulsive use or occupancy in the face of imminent danger. When the facts of this case are viewed in their entirety, it is our conclusion that they fall more nearly in the first category and, therefore, necessarily place the case on the sovereign immunity side of that fine judicial line.

In view of the unusual circumstances presented by the facts of the case, we think it is also appropriate to look for guidance to the relevant reports and expressions of the Congress, just as the Supreme Court did in *United States v. Pacific R.R.*, *supra*. In an elaborate report on claims growing out of the Civil War, the House of Representatives distinguished between the temporary use of property as an urgent military necessity from other takings for war purposes. The report reads in pertinent part as follows:

By the principles of universal law recognized anterior to the Constitution, in force when it was adopted, and never abrogated, every civilized nation is in duty bound to pay for army supplies taken from its loyal citizens, and for all property voluntarily taken for or devoted to "public use."

But there is a class of cases in which property, real or personal, of loyal citizens may be temporarily occupied or injured, or even destroyed, on the theater of and by military operations, either in a loyal State or in

enemy's country, in time of war, as a military necessity. The advance or retreat of an army may necessarily destroy roads, bridges, fences, and growing crops.

In self-defense an army may, of necessity, erect forts, construct embankments, and seize cotton bales, timber, or stone, to make barricades.

In battle or immediately after, and when it may be impossible to procure property in any regular mode by contract or impressment, self-preservation and humanity may require the temporary occupancy of houses for hospitals for wounded soldiers, or for the shelter of troops, and for necessary military operations which admit of neither choice nor delay.

In these and similar cases the question arises whether there is a deliberate voluntary taking of property for public use requiring compensation, or whether these acts arise from and are governed by the law of overruling military necessity—mere accidents of war inevitably and unavoidably incidental to its operations—and which by international law impose no obligation to make recompense. It seems quite clear that they are of this latter class.

The Government has always paid loyal citizens for the use and occupation of buildings and grounds in loyal States when used for officers' quarters, regular recruiting camps, and in cases where the occupation was voluntary and the result of choice, superinduced by no overruling military necessity, and for this the law provides.

But a temporary occupancy of real estate imposed by overruling necessity—an occupancy continued during the actual existence of such impending necessity—or the application of materials to purposes of defense in an emergency, has not, by the usage of the Government, been regarded as giving any claim for compensation. [H.R. Rep's No. 262, 43d Cong., 1st Sess., pages 39, 43.]

Mindful of the Supreme Court's caveat in *Calter* that each case in this category must be judged on its own facts, we refrain from laying down any broad or general rule. We

decide only that the temporary occupancy of plaintiffs' buildings and the damage inflicted on them by the rioters during such occupancy did not constitute a taking of the buildings for use by the Army within the contemplation of the fifth amendment, as that amendment is interpreted by the authorities discussed above. It is abundantly clear from the record before us that the military units dispatched to the Atlantic side of the Zone by General O'Meara were not sent there for the purpose or with the intention of requisitioning or taking plaintiffs' buildings to house soldiers. Both buildings had previously been looted and damaged by the rioters. Colonel Sachse's men were ordered to remove the Panamanians from the buildings in order to prevent further loss or destruction and then to seal off the border from further incursions by the rioters into the Atlantic portion of the Canal Zone. After the Army troops became engaged in a pitched battle with a large and formidable mob and then only after one soldier was killed and many others were injured by bullets and missiles, the troops were ordered into the buildings in order to avoid further casualties among them. During the temporary occupancy of the two buildings, they were under a sustained attack by the mob until the riot ended. Moreover, it is undisputed that all of the damages included in the main portion of plaintiffs' claim were inflicted by the rioters. Consequently, we hold that the loss is one which must fall upon the plaintiffs.

II

There remains for consideration that portion of plaintiffs' claim for loss of value and rental income arising out of alterations to the Masonic Temple, which the Government made after the cessation of the riot for the purpose of fortifying the building for use in any future riot. The alterations in the building were made to improve its security and to provide a reasonably safe place in which the Canal Zone police and the military could be stationed in the event of future disturbances in the area. Therefore, at Government expense, the windows and doors fronting 11th Street and Bolivar Avenue on the ground floor were sealed with con-

crete blocks and the wooden doors and windows on the other two sides were covered with sheet metal to make them fire resistant. Wire mesh was placed over all the windows on the second, third, and fourth floors, and steel shields were installed on the rooftop.

The only claim made regarding the changes is for the loss of value and rental income resulting from "sealing off the ground floor."

The plaintiffs contend that the alterations to the structure were forced upon them and that at no time did the officials of the Temple waive their right to claim a permanent loss as a result of the changes made by the Government. We find that this position is unsupported by the evidence, that the structural changes were made with the consent of the plaintiffs, and that a full accord and satisfaction was reached between the parties.

Plaintiffs correctly point out that on February 11, 1964, after the initial installations, the defendant by letter requested the Master of the Masonic Temple to confirm the fact that the changes in the building accorded with the prior verbal agreement of the parties. By reply of March 4, 1964, the master of the lodge replied that he had not specifically agreed to the complete blocking of the windows and doors on the ground floor and had understood that, in the future, the doors would be replaced and that some of the concrete window blocking would be replaced with glass brick. He ended the letter with the statement that he could not categorically agree that all the Government installations in the building were acceptable and that it might be necessary for the lodge to make a claim against the Government in the future. Had no further action been taken, plaintiffs might have a valid claim. The record is clear, however, that the parties subsequently agreed upon certain modifications in the installations which satisfied the lodge's request and conformed to its version of the verbal agreement. In reply to the March 4 letter, the Government, in a letter dated July 8, 1964, submitted to the master of the lodge a list of changes it was prepared to undertake, at Government expense, to

comply with the lodge's wishes. These changes included, *inter alia*, replacing some of the concrete blocks used to seal the doors and windows of the ground floor with doors and sections of glass brick, plus plastering and painting the remaining concrete blocks. The master of the lodge replied on August 6, 1964, in part, that "I am pleased to advise you that the work outlined by you to be completed at Government expense will be considered as *full compliance with our agreement.*" [Emphasis added.]

The evidence submitted with the motions of the parties consists of the correspondence between them, and it shows that the structural changes in the Temple were made with the consent of the owner. There is no indication that either party at any time considered the changes to be a "taking" within the meaning of the fifth amendment. It is clear that the only claim the Masonic Temple intended to reserve in its March 4, 1964, letter was one for specified unacceptable installations, and that those defects were later remedied to the full satisfaction of the owner. Moreover, plaintiffs have failed to support their claim with any evidence that the alterations decreased the value of the property or lowered its rental value. In the absence of such proof, we may assume that the structural changes were as much a benefit to the Masonic Temple as they were to the Government, inasmuch as such changes rendered the building less vulnerable to riot damage in the future.

III

Our conclusions stated above require the granting of defendant's motion for summary judgment, the denial of plaintiffs' motion for summary judgment, and the dismissal of plaintiffs' petition. It is so ordered.

• DAVIS, *Judge*, dissenting in part:

On the question decided in Part I. of the court's opinion,¹ this is an extremely close case, teetering on the balance. The

¹ I join in Part II of the opinion.

court's view is certainly tenable and may be correct, but I have come to another conclusion and therefore explain it briefly. My disagreement turns on a difference, primarily, as to the legal significance of an emergency situation or imminent hostilities, and secondarily, as to the conclusion to be drawn from the specific facts of this case.

In one of its briefs the Government says: "the plaintiffs assume to be a matter of fact the seizure and use of their buildings *as a place of refuge and defense for American troops* (Pl. Br. pp. 14, 31), and on the basis of this convenient assumption argue that the United States must compensate them for its use of their property. Were their assumption true, their argument based upon it would be correct." (Emphasis added.)² This statement reflects—together with its counterpart, quoted in note 2—the traditional rules as I understand them. Where private property has been destroyed or damaged as a result of armed conflict, the sovereign is not liable (i) if the damage was deliberately done to prevent its falling into enemy hands (denial destruction),³ or (ii) if the damage occurred (as variously put) in actual battle, by "the fortunes of war", "in the path of war", "by actual and necessary military operations", through bombardment or shelling, or in attacking or defending against the enemy.⁴ On the other hand, the Government is liable where it first takes the property for its own military

² The brief goes on: "However, the stipulated facts, which we shall review subsequently, clearly show that the plaintiffs' buildings were not appropriated by the Army for a public use, but were merely entered by the Army as an incident of its task of ejecting looters and rioters and restoring order in the Canal Zone" (emphasis added).

³ *United States v. Caltex (Philippines), Inc.*, 344 U.S. 149 (1952).

⁴ See *United States v. Pacific R.R.*, 120 U.S. 227, 234-35, 238-39 (1887); *United States v. Caltex (Philippines), Inc.*, *supra*, 344 U.S. at 153-54, 155-56; *Perrin v. United States*, 4 Ct. Cl. 543, 547-48 (1868), *aff'd*, 12 Wall. 315 (1870); *Franco-Italian Packing Co. v. United States*, 130 Ct. Cl. 736, 747, 128 F. Supp. 408, 414-15 (1955); II Whiteman, *Damages in International Law* 1421 (1937).

use, and then exposes the place to enemy attack or evokes one, leading to injury or destruction.⁵ In this connection, there is no exception from liability, as I read the materials, for temporary seizures for military use in the fact of imminent hostility or to meet an emergency; once the property is taken for a military use, the Government is responsible for its subsequent injury, no matter how quickly that follows upon the seizure.⁶ The boundary between these latter "takings" and the "fortunes of war" cases is indeed thin, indistinct, and hard to trace. But these are our current guidelines, unsatisfactory though they be, and I do not see

⁵ See *Mitchell v. Harmony*, 13 How. 115, 133-34 (1852); *United States v. Russell*, 13 Wall. 623, 627-28 (1871); *United States v. Pacific R.R.*, *supra*, 120 U.S. at 234, 239; *Walker v. United States*, 34 Ct. Cl. 345, 347 (1899); Borchard, *Diplomatic Protection of Citizens Abroad* 262-64 (1915); II Whiteman, *op. cit. supra*, at 1421; *Putegnati's Heirs* (U.S. v. Mexico), IV Moore, *International Arbitration*, 3718-3729 (1898); *American Elec. & Mfg. Co.* (United States v. Venezuela), Ralston's Report, 128 (1904) *Annuziata Petrocelli* (Italy v. Venezuela), Ralston's Report 762, 763 (1904).

⁶ See II Whiteman, *op. cit. supra*, at 1421 ("Where, however, real property is used, occupied, etc. so as to expose that property particularly to enemy fire, compensation is made for such use on the ground that the property has been seized for public use and destroyed as so employed."); *Putegnati's Heirs*, *supra* (house seized and fortified, then destroyed by enemy forces); *American Elec. & Mfg. Co.*, *supra* (telephone plant damaged, after Government troops seized it during an attack); *Annuziata Petrocelli*, *supra* (government troops entrenched themselves in front of claimant's house and took possession of it, leading to an enemy attack).

The House Report (H.R. Rep. No. 262, 43d Cong., 1st Sess.) on which the majority relies does say that compensation need not be paid for "the temporary occupancy of houses for hospitals for wounded soldiers, or for the shelter of troops, or for necessary military operations which admit of neither choice or delay", but I do not think that, in this respect, the congressional report states the rule correctly. The authorities cited in footnote 5 and in the first paragraph of this footnote—particularly the actual decisions of international arbitral tribunals—are to the contrary. I do not understand the dictum in *Franco-Italian Packing Co. v. United States*, *supra*, 130 Ct. Cl. at 747, 128 F. Supp. at 414 (noncompensability of property seized "as an incidental element of defense against hostile attack") as covering a seizure of property for military use, and the subsequent destruction of that property, but merely destruction or injury by the Government's troops in the course of a battle.

it as the function of this court, at this time, to alter them or build anew. We must apply them as best we can.⁷

To use the words of defendant's brief, was the Government's temporary occupation of plaintiffs' building "as a place of refuge and defense for American troops" or was it "as an incident of its task of ejecting looters and rioters and restoring order in the Canal Zone"?⁸ The former would be a compensable taking for military use even though destruction followed shortly; the latter a noncompensable incident of battle. As I appraise this record, the first is the better characterization of the facts. The United States troops cleared plaintiffs' holdings of rioters and looters before the occupation of the buildings, and took up stations in the street in front of the buildings; the soldiers remained there for a while and did not withdraw into the buildings until after sniper fire had begun, and this withdrawal was made to "protect the troops from the sniper fire and early sieges of Molotov cocktails";⁹ inside the buildings the soldiers erected barricades and took shelter, not only from the sniper fire but from the Molotov cocktail attacks which followed; also, a "command post" on the top floor of that structure; the soldiers remained in the YMCA and the ground floor of the Masonic Temple for some 12 to 14 hours, and longer on the top of the Masonic Temple.

To me, all of this shows the seizure and use of both buildings "as a place of refuge and defense for American troops"—a place of protection, of shelter, of rest, of a com-

⁷ Nor does the majority of the court attempt to refashion the governing rules, at it sees them.

⁸ I judge from its briefs that the defendant's position on the legal irrelevance of an emergency situation or imminent hostilities—if a "taking" in fact occurs—is closer to mine than to the court's.

⁹ The United States' official presentation before the OAS said that the platoons were moved to the buildings "to provide more protection from the sniper fire"; the General Counsel of the Army said that the purpose of the withdrawal was "in order to protect the troops from the sniper fire"; the commanding officer of the U.S. Forces in Cristobal described the maneuver as providing "cover" for the troops from sniper fire.

mand post, and of an observation point. The assaults from the Panamanian side on the buildings (for which plaintiffs now seek recovery) came about because; and after, the United States troops had entered and occupied them. The buildings were "used, occupied, etc. so as to expose that property particularly to enemy fire" (II Whiteman, *op. cit. supra*, at 1421). The buildings' "destruction by the enemy * * * [was] a necessary consequence of the nature of the service to which, for the public benefit, the * * * [buildings] were subjected"; "the enemy destroyed the property indeed, but only after the Government had taken it for public use, by being used by the Government, and because it was so used" (*Putegnati's Heirs, supra*). "When the Government's troops entrenched themselves in front of claimant's habitation and took possession they made it the object of the enemy's attack. They condemned it specially to public use. Claims for damages to it were taken out of the field of the incidental results of war, the Government having invited its destruction" (*Annuziata Petrocelli, supra*, at 763).

Conversely, these facts show, to my mind, that the injury to plaintiffs' property did not occur directly "as an incident of [the troops'] task of ejecting looters and rioters and restoring order in the Canal Zone" (as defendant puts it), or because the buildings were shelled or burnt in the course of a running battle in the area (as were other structures in the Zone), or as "mere accidents of war inevitably and unavoidably incidental to its operations" (H.R. Rep. No. 262, *supra*).¹⁰

For these reasons, I would hold for the plaintiffs on this branch of their claim.

¹⁰ For instance, the damage to the structures occurring before the rioters were evicted by the troops or in the course of evicting them (losses for which plaintiffs do not ask recovery) is non-compensable. Similarly, no damages would be payable if the later injury to the buildings were caused by efforts of soldiers stationed on the street to put out fires, or to prevent the storming of the buildings, or to stop renewed entry by rioters into the buildings.

Exhibit E

This Exhibit consists of 33 photographs of the YMCA, Masonic Temple and Commisary [sic] Building, located in Cristobal, Canal Zone, and relates to the events which occurred during the period from January 9, 1964 through January 14, 1964. With the exception of E-32 and E-33, all of the photographs were taken during the period from January 10, 1964 through January 15, 1964. Photographs E-1 through E-28 were taken by Rev. Daniel B. Meritt of the Margarita Union Church, Margarita, Canal Zone, and Rev. Clarence C. Payne, Balboa, Canal Zone. The photographs E-29 through E-33 were taken by U.S. Government photographers:

E 1-2: Photographs taken on Friday, January 10, showing U.S. Army troops inside main building of YMCA.

E 3: Photograph taken January 10, showing U.S. troops inside YMCA Annex which was later completely destroyed.

E 4: Photograph taken on the morning of Friday, January 10, showing interior of main building of the YMCA.

E 5: Photograph taken about 9:00 a.m., Friday, January 10, showing back entrance to the Masonic Temple located on Balboa Avenue. (See Chart—Exhibit P-M4).

E 6: Photograph taken about 9:00 a.m., Friday, January 10, showing barber shop in YMCA.

E 7: Photograph taken about 11:00 a.m. on Friday, January 10, showing mob crowding on the Republic of Panama side of Bolivar Avenue, just opposite the YMCA.

E 8: Photograph taken about 1:00 p.m., Friday, January 10, showing initial stages of the destruction of the YMCA by fire.

E 9: Photograph taken about 3:00 p.m., Sunday, January 12, looking northwest over Commisary [sic] Build-

ing and Masonic Temple, showing ruins of Commisary [sic] Building.

E 10: Photograph taken about 3:00 p.m., Sunday, January 12, showing ruins of YMCA and Masonic Temple.

E 11-13: Photographs taken about 3:00 p.m., Sunday, January 12, showing remains of YMCA Annex.

E 14-16: Photographs taken about 3:00 p.m., Sunday, January 12, showing Masonic Temple and troop positions behind YMCA.

E 17-20: Photographs taken Tuesday, January 14, showing remains of interior of the YMCA Annex.

E 21-24: Photographs taken Tuesday, January 14, showing damage within main building of the YMCA.

E 25-26: Photographs taken Tuesday, January 14, showing barricade between YMCA and Masonic Temple and barricade between Masonic Temple and Commisary [sic] Building.

E 27: Photograph taken Tuesday, January 14, showing remains of Commisary [sic] Building.

E 28: Photograph taken Tuesday, January 14, showing case of Molotov cocktails found inside YMCA Annex after its destruction by fire.

E 29: Photograph taken on or about January 14, looking southwest on 11th Street, showing outside destruction of Masonic Temple.

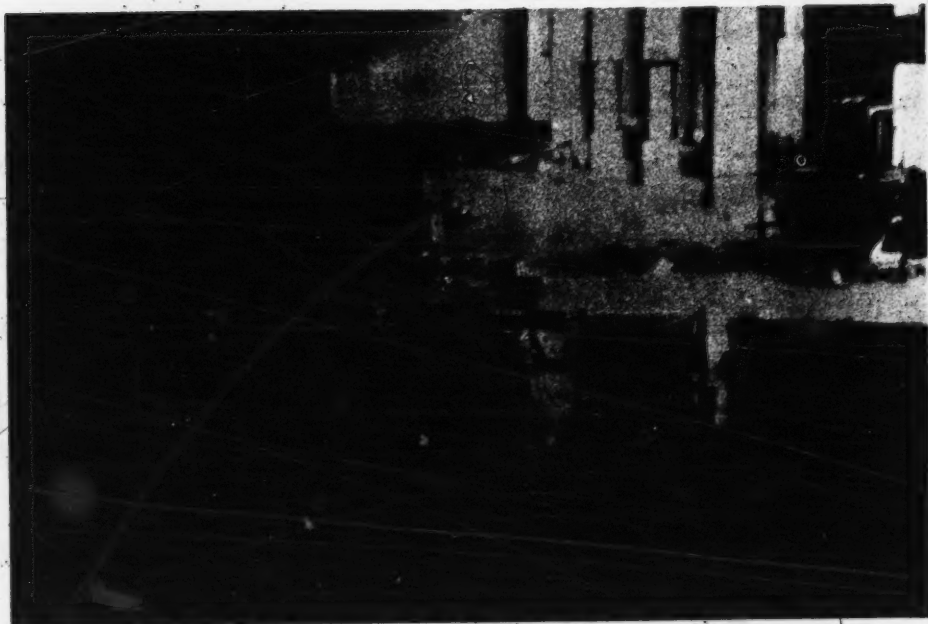
E 30-31: Photographs taken on or about Tuesday, January 14, looking southeast on Bolivar Avenue, showing outside destruction of Masonic Temple and YMCA.

E 32: Photograph taken sometime after January 14, showing Masonic Temple, subsequent to repairs by the U.S. Government's Panama Canal Company.

E 33: Photograph taken on November 16, 1966, showing Masonic Temple after final repairs by U.S. Government.



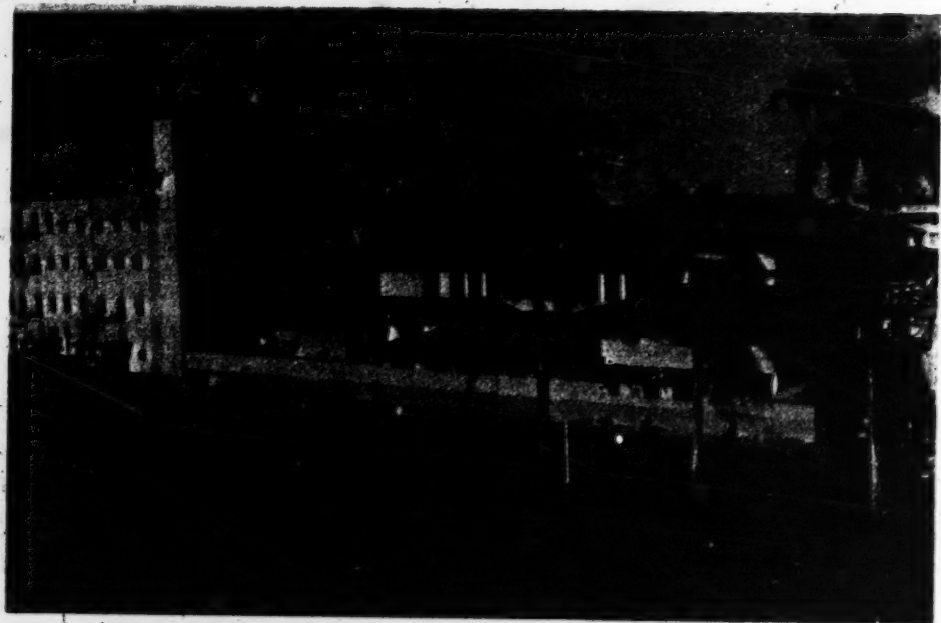
E-1.



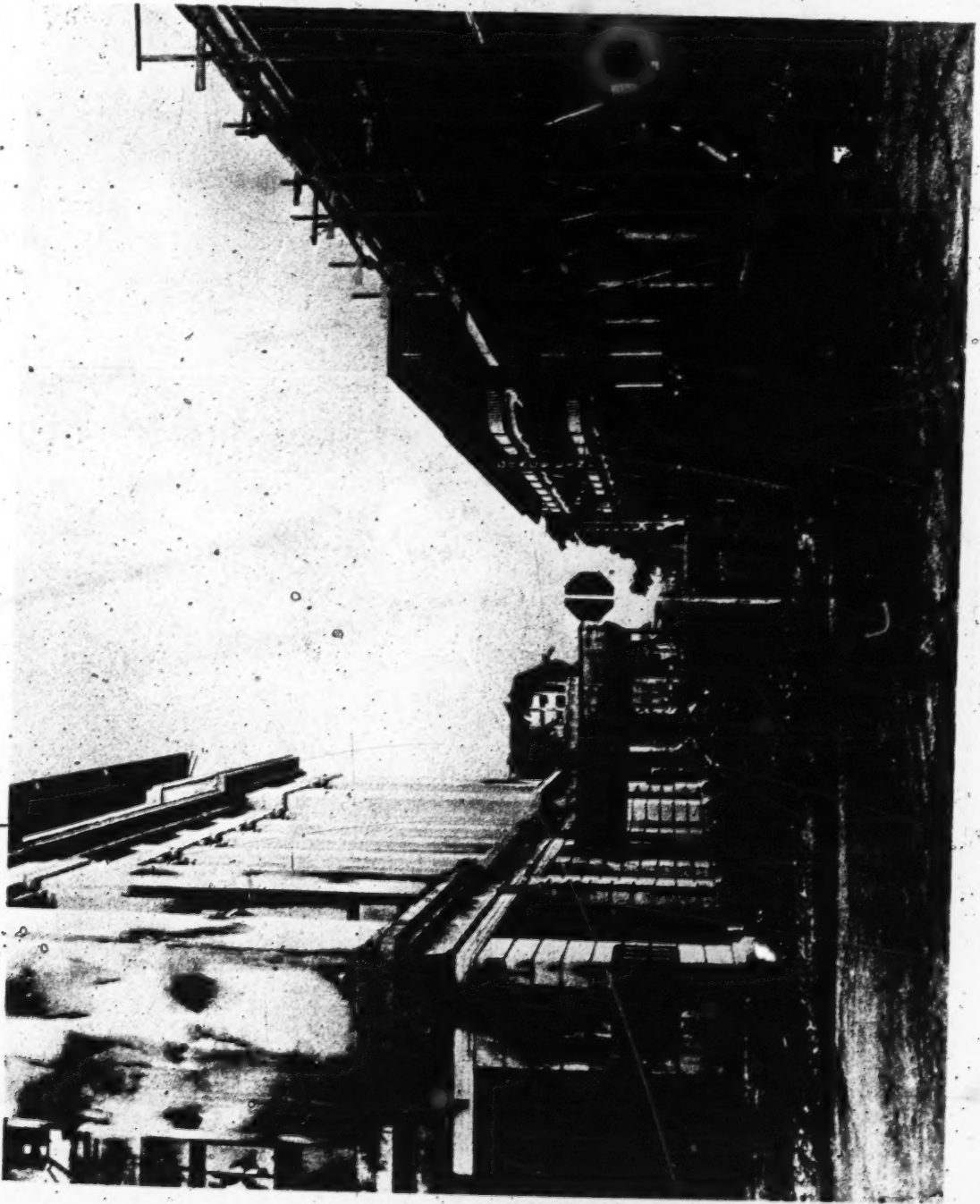
E-2.



E-9.



221a



MAP EXHIBIT - CRISTOBAL

300 FEET

COLON HARBOR

CANAL ZONE BOUNDARY

CRISTOBAL PIER AREA

ADMINISTRATIVE BUILDING

CANAL

CRISTOBAL HARBOR

REPUBLIC

OF

PANAMA

ZONE

RAILROAD

RAILROAD

COLON RIVER

Exhibit P-13

LEGEND

- ROUTE OF PANAMA TRANSPORTATION IN CANAL ZONE (1900 TO 3:40 PM JAN 8, 1994)
- APPROACH ROUTES OF PANAMA RIVER
- MAJOR PORTS OF PANAMA RIVER (JAN 8 TO 12, 1994)
- AREAS OF DEEPER PENETRATION OF RIVERS INTO CANAL ZONE
- RAILROAD LINES AND BRANCHES OR BRIDGES
- APPROXIMATE POSITIONS OF DEEPER PANAMA RIVERS
- CANAL ZONE - REPUBLIC OF PANAMA BOUNDARY

